

The myth of good land and natural resource governance in Europe:

What the case studies reveal and how the CFS Tenure Guidelines on land, fisheries and forests provide guidance to revise European land policies

**By Claire Guffens, Florence Kroff (FIAN Belgium)
and Philip Seufert (FIAN International)***

Introduction

In covering a range of diverse national economic, social and political settings, this collection has shown that there are very real and urgent issues concerning the governance of land and natural resources in Europe. The case studies presented clearly point to some fundamentally worrying trends. First, a strong dynamic of (re)concentration of land and other related resources is developing. Second, in contrast to the common discourse on land matters, land grabbing is taking place also in Europe, especially (but not exclusively) in Eastern European countries. Third, agricultural lands are being transformed for non-agricultural uses at a fast pace, a process that has been referred to in this study as 'artificialisation'. Finally, and intrinsically linked to these trends, is an increasing problem of access to land, especially for some groups such as small scale farmers and young prospective farmers, leading to discrimination and marginalisation of these groups.

These findings clearly run counter to the dominant view, implicitly held by many in government, academe and the media, that there are no major problems with respect to governance of land and natural resources in Europe, or any OECD countries. Indeed, it seems to be simply taken for granted that whatever burning land issues there once were have been resolved, and that Europe today is a showcase of good land governance. In this view, good land governance is essentially a technical matter, one characterised by a strong (private) property rights regime and well-functioning land management institutions (cadastres, registries, land markets, courts, etc). From this perspective, land is seen as an economic asset to be administered and transacted as cheaply and efficiently as possible.

As the different authors here have shown, however, such a view entails a very limited understanding of land, one which marginalises other understandings and practices that approach land more holistically. A more holistic approach is one that embraces land and other natural resources as having not just economic value, but also social, cultural and ecological significance, and whose governance can never be just a matter of technical consideration, but is also a fundamental human rights concern. Although in the European context, or the "Global North" more generally, many people do not depend on direct access to land in order to feed themselves, but rather buy their food, all of us still need access to land. Simply put, there is no access to food without access to land, albeit in an indirect form, such as mediated via markets. Governance of land and natural resources should therefore aim at ensuring sustainable production of healthy food for the domestic and international realization of the right to food.

Yet the European food system poses a number of serious environmental, social and nutritional problems and threats. The European Union (EU) is producing large amounts of food and is the world's largest food exporter, evidence taken as 'proof' of its success by many European policymakers. This "success", however, is based on an unsustainable model of agriculture. Access to fossil fuels and imported raw materials (for instance, soy for animal feed) and access to agricultural land (both in Europe and abroad) are key in maintaining a food and farming system that is becoming more and more industrialised. Overproduction leaves many people without access to healthy nutritious food on the one hand and creates mountains of food waste on the other. The environment and the climate are negatively impacted because the current system heavily relies on the use of chemical fertilisers, pesticides and fossil fuels, and leads to soil degradation as well as loss of biodiversity.

This model of production goes hand in hand with the dominant approach to governance of land and entails the problems identified in this volume. In this sense, the current form of land governance is functional to an "imperial mode of living", as outlined in the country study on Austria – i.e. a mode of living that is based on fossil fuels and takes for granted current and future availability of "cheap" energy and food (increasingly seen as mere commodities, and "cheap" because they do not take into account the wider economic, social and environmental costs). The current economic and financial crises and the progressive dismantling of the European welfare systems, which rely mostly on social security schemes in order to ensure an adequate standard of living for European citizens – including access to food – have led to increasing food insecurity and, in some cases, even hunger in Europe. As the case of Spain in the present volume shows, Andalusian landless workers have started to occupy and cultivate idle public lands as a way to claim their human right to work and to food, in a context of massive unemployment and severe cuts in social security schemes.

All this puts the issue of land governance in Europe even more directly in the framework of human rights and raises the question of how to improve the governance of land and natural resources from this perspective. In this chapter, we address this question by way of the FAO Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (hereinafter referred to as Tenure Guidelines, or TG), which were endorsed on 11 May 2012 by the UN Committee on World Food Security (CFS).¹ These Guidelines are anchored in human rights and are intended to provide guidance for governments on how to improve the governance of land and natural resources. Several European countries and the European Union (EU) played a key role during the process of formulating and adopting these Tenure Guidelines, both as a major donor in the funding of the whole process and as an influential actor during the intergovernmental negotiations. Implicit in their efforts was the assumption that such a soft-law instrument could contribute to improving the governance of land and natural resources *in the Global South* – not at home in Europe.

However, Europe is not free of problems on this front and in our view the situation points to an urgent need today to reform the current system of governance of land and natural resources. We believe that the TG provides a highly relevant and useful tool, one that is capable of identifying problems in and providing guidance on how to improve land governance in Europe. And given the role that they played during the TG formulation and negotiation process, the EU and several European countries have a special moral and legal responsibility to implement the TG at the domestic level, as well as abroad. To support such an effort, and drawing on and dialoguing with the cases discussed in this volume, we focus in this chapter on using the Tenure Guidelines to identify major problems in the governance of land in Europe today, and as a baseline to elaborate a pathway towards truly good land governance (i.e. one anchored in a human rights framework).

The CFS Tenure Guidelines as a tool to improve land governance in Europe

The Tenure Guidelines were officially endorsed by the 125 members of the CFS in May 2012. The stated objective of these Guidelines is to serve as a reference and to provide practical guidance to governments to improve governance of land, fisheries and forests.²

The TG are novel in two fundamental ways. First, they were developed in an inclusive and participatory process that lasted more than three years, in which representatives of social movements and other civil society organisations had a role in shaping their content. It has to be underlined that the final text of the Guidelines was ultimately agreed by governments, and as such, is best understood as a consensus document trying to accommodate conflicting views. Second, the TG are the first international instrument to apply an approach based on human rights, and especially economic, social and cultural rights to the governance of land, fisheries and forests. They are anchored in existing obligations under international human rights law, explicitly mentioning the Universal Declaration of Human Rights (UDHR) and establishing principles of implementation that make clear that the tenure of land, fisheries and forests is not a business matter, but a fundamental right that must be recognized, respected and guaranteed.

In this sense, the TG provide a remarkable response to an urgent issue: promoting secure tenure rights and equitable access to land, fisheries and forests, as a means to eradicate hunger and poverty and to contribute to food security and the realization of the right to food. As explicitly stated in the preface, *“the purpose of these Voluntary Guidelines is to serve as a reference and to provide guidance to improve the governance of tenure of land, fisheries and forests with the overarching goal of achieving food security for all and to support the progressive realization of the right to adequate food in the context of national food security.”*

Paragraph 1.1 further says that *“all programmes, policies and technical assistance to improve governance of tenure through the implementation of these Guidelines should be consistent with States’ existing obligations under international law, including the Universal Declaration of Human Rights and other international human rights instruments.”* The same paragraph underlines that the Guidelines should be applied *“with an emphasis on vulnerable and marginalised people, with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development.”* In other words, the Tenure Guidelines should benefit above all marginalised groups, i.e. individuals and communities of farmers and small-scale producers, of fishers and of forest users, pastoralists, indigenous peoples and other communities.

This strong focus on human rights and on the realization right to food in particular, may seem to apply only to or to have most relevance in contexts where high numbers of people suffer from hunger or malnutrition. But this point must be nuanced. To be sure, unlike in many parts of the world, a large portion of the population in Europe does not rely on direct access to land to feed themselves, while social security systems in many European states have managed to mitigate the effects of loss of access to natural resources for a long time. But a significant portion of the European population does in fact depend on direct access to land and natural resources for their livelihoods, and, moreover, the realisation of the human right to adequate food calls for sustainable production of and access to healthy food for every member of society. This involves the right of people to organise to feed themselves in a way that responds to their own choices and preferences with regard to production and consumption; this is encompassed by the right of every human being to achieve his/her well-being.

The TGs are therefore also relevant in the European context. Moreover, as parties to human rights treaties (such as the International Covenant of Economic, Social and Cultural Rights – ICESCR³), to the European Social Charta, and to international customary law⁴, European states clearly have obligations under international human rights law. Therefore they should apply the Tenure Guidelines as soft law instrument. It bears recalling that the Universal Declaration of Human Rights is explicitly mentioned in paragraph 1.1. of the Guidelines, and accordingly it is explicitly clarified in the Guidelines that they are “*global in scope*” (paragraph 2.4).

Meanwhile, the human rights focus of the Tenure Guideline entails particular emphasis on vulnerable and marginalised people. In Europe, this applies notably to small-scale farmers who are heavily discriminated against through policies and mechanisms enforced at the national and EU level in all cases presented. This includes marginalisation and discrimination resulting from lack of support services (Bulgaria, Ukraine) and from public support for large-scale, industrial agriculture, including through the support for large-scale land-based investments (Spain, Hungary, Ukraine, Bulgaria, Romania, Serbia); as well as from spatial planning that destroys peasant agriculture (Austria), from liberalisation and deregulation of land markets (France, Germany, Serbia), and from policies favouring of non-agricultural use of land (France, Germany, Italy, Austria, Hungary). Applying the TG can thus provide much-needed guidance in reforming governance of tenure in Europe.

Analysing governance of land and natural resources in Europe with the Tenure Guidelines – problems and ways forward

The Guidelines contain a number of elements that help to identify underlying governance problems that lead to the trends regarding access to natural resources as identified by the country studies of the present volume, and provide useful guidance on how to address these and reform policies and legal frameworks. It becomes clear that many of the provisions of the Tenure Guidelines do indeed support the claims made by social movements and other civil society organizations in Europe regarding tenure of land and natural resources. The main problem related to tenure of land and natural resources in Europe today is a lack of access to land by small scale farmers and prospective farmers. Furthermore, we can identify a clear discrimination of these groups. The main expression of this problem is a clear trend to increasing (re)concentration of land, which is in some cases taking the form of land grabs as witnessed also in many countries of the Global South, and an increasing transformation of agricultural lands to non-agricultural uses – often combined with a process of artificialisation of land. It has to be underlined that these trends are the results of public policies, as well as of the processes in which decisions are taken. This refers to both national as well as the EU level.

Land concentration and privatisation

The first issue to highlight is the privatisation of lands and deregulation of land markets. As the case examples show, this is especially a more recent trend Eastern European and former socialist countries, including East Germany. These countries went through the transition of the collectivisation of land to a radical land privatisation and fragmentation following the fall of the Iron Curtain in 1989. This has led to a situation where land use is both concentrated and fragmented, smallholder agriculture remaining relatively high though. After 1989, many farmers received their original land back, and all these small, non-competitive lands became in turn easy targets of various forms of land grabbing. In Serbia, for instance, a privatisation process started in the aftermath of Yugoslavia’s disintegration around 2000 and many agricultural companies were privatised without the question of their ownership

over agricultural land being previously solved. The Serbian case also shows how EU policies push for privatisation, since the terms for adhesion to the EU include the liberalisation of the land market, including the opening up of land markets to foreign buyers. Combined with a lack of state support to small and medium-scale farmers, this has contributed to land grabbing and increasing concentration of land ownership. In the same way, Hungary and Romania have witnessed a wave of privatisation combined with a withdrawal of national public investment from the countryside with their accession to the EU in 2004 and 2007 respectively.

The process of land privatisation is however not limited to former socialist countries. In Andalusia, the process of privatisation of public land has led to the loss of nearly all collective property with over 95% of farm holdings that are today under private property regime. The case of Somonte perfectly illustrates the withdrawal of the Spanish State and the consequences of the privatisation of public lands.

Investment policies

Current investment policies at national and EU level also play an important role when it comes to the current trends in land tenure in Europe. These investment policies are favouring an industrialised agricultural model, favour large land holdings and in many cases give incentives for non-agricultural use of land. At national level, the studies on Spain, Romania, Hungary and the Ukraine show how policies favour policies and frameworks that favour a large-scale industrial model of agricultural production, while the examples of France, Germany, Italy and Hungary provide examples on how non-agricultural uses of land are promoted and supported – be it for infrastructure projects as the Notre-Dame-des-Landes airport in France, (renewable) energy infrastructure (Germany and Italy) or various uses ranging from motorcycle race rings to golf courses and private luxury estates as in Hungary.

Also at European level, the dominant investment policies are fostering industrial agriculture, big infrastructure and renewable energy. The CAP is certainly an important factor in this context, whose effects towards increased land concentration and favouring large holdings are described in almost all of the country studies of this collection. However, one should also mention other EU policies that foster agro-industrial development at the expense of sustainable small-scale agriculture, such as the EU Renewable Energy Directive (RED), which sets 10% mandatory targets for EU Member States by the year 2020 for renewable energy use, primarily agrofuels, out of the total consumption of fuel for transport and which has contributed to a rush for land. To mention one example, there seem to be a clear connection between Ukraine's increased rapeseed production in the mid-2000s and the EU's rising demand for agrofuels (up to 90% of the crop is exported to countries in the EU). Also the case of "Furtovoltaico" in Sardinia shows how subsidies and laws towards renewable energies are contributing to land investments and land use change. The Romanian example further refers to the European Agricultural Fund for Rural Development (EAFRD) that privileges agribusiness through a variety of schemes.

These investment policies are accompanied by spatial planning at national or local level that supports or justifies them, be it either through the sheer absence of consistent spatial planning or spatial planning that contributes to destroying peasant agriculture, as, for instance, in the case of Austria.

All these policies have contributed to the heavy discrimination and marginalisation of small scale farmers, as described in the country cases. This is contrary to the provisions of the Tenure Guidelines, whose guiding principles include non-discrimination (par. 3B2). This includes particularly the prohibition of discrimination based on lack of access to economic resources (par. 4.6). As the case studies on Germany and France show, this is an important factor contributing to unequal access to land and discrimination

of peasants in Europe, particularly young prospective farmers who are simply not able to pay the sums needed to get a piece of land. The Tenure Guidelines call for pro-active actions by states in support of people that are “*unable through their own actions to acquire tenure rights to sustain themselves*”. What is more, the Tenure Guidelines clearly emphasise the need for positive action “*to promote equitable tenure and access to land, fisheries and forests, for all, women and men, youth and vulnerable and traditionally marginalized people*” under the guiding principle on Equity and Justice (3B3). As becomes clear in the country studies, it is extremely difficult today for prospective young farmers to acquire access to land, especially in Western Europe. In some contexts, such as in Andalusia, historic patterns of unequal land distribution make access to land and natural resources even more complicated. The Spanish case also calls for a special attention that has to be given to gender equality (3B4).

The Tenure Guidelines and the need to revise current policies

Current policies at the national and EU level in fact contribute to increasing concentration of land and discriminate and marginalise small-scale farmers and young people. The Tenure Guidelines therefore support claims for the need to assess and revise the existing legal and policy frameworks (see, for instance, par. 5.1 and 5.2).

Recognise different tenure rights

A particular responsibility arises when it comes to public lands, fisheries and forests. Rather than promoting the privatisation of these resources, the Guidelines call upon states to “*determine the use and control of these resources in light of broader social, economic and environmental objectives*”. (par. 8.1) Taking into account these considerations, states are required to determine which of these resources should be allocated for use by others and under what conditions and which not (par. 8.5). In addition, the Guidelines call for policies on the use and control of public lands “*that promote equitable distribution of benefits from State-owned land, fisheries and forests*”, which have to be developed through an inclusive consultation process, that particularly include those who have traditionally used these resources, and anyone who could be affected (par. 8.6, 8.7). In the context of discrimination and lack of access to land by specific groups, states should – based on the Guidelines – therefore prioritise the use and allocation of public lands for these marginalised groups, in order to achieve the objectives set out in the Guidelines (par. 1.1). Processes such as the one launched by the Italian government encouraging the creation of new farms through the sale of public land are not the best option in this respect. Another example is Andalusia, where the process of privatisation of public land has led to the loss of nearly all collective property. Facing high levels of unemployment in the area, peasants of Somonte have occupied public lands to protest against it being sold to a private company.

The Tenure Guidelines remind states that there are various forms of tenure rights that can be allocated on public lands, ranging from limited use to full ownership and underline that policies “*should recognize the range of tenure rights and right holders*.” (par. 8.8) This supports, for instance, claims of movements in Italy and Spain not to simply privatize public lands, but to make them available for young farmers or workers’ cooperatives, for instance through long-term leases. The Guidelines further state that such policies also require that “*where necessary, those who are allocated tenure rights should be provided with support so they can enjoy their rights*.” (par. 8.8) Regarding the range of tenure rights and use of natural resources, the Guidelines further underline that public lands may be collectively used and managed, and that in these cases states should protect these resources as well as “*their related systems of collective use and management, including in processes of allocation by the State*” (par. 8.3) – thus calling for the protection and strengthening of the commons in Europe.

It is crucial – and the Guidelines are clear in this respect – that the decision-making process regarding public lands has to be inclusive, in order to determine their use “in light of the broader social, economic and environmental objectives.” In this sense the Tenure Guidelines call for the disclosure of information of all available public lands in order to conduct a public discussion about their use (par. 8.4). This should also include the identification of lands that could be allocated to a publicly controlled land bank or fund, as social movements in several European countries demand.

Redistributive Reforms

As stated earlier, one of the key factors that is leading to the marginalisation of small-scale and prospective farmers is the ever increasing concentration of land in Europe. One of the necessary measures to counter and reverse this trend are redistributive reforms. With land concentration having reached dramatic levels, redistribution of land to landless prospective farmers becomes an urgent matter. This is a key demand of ECVC and many agrarian social movements in Europe and is supported by the Tenure Guidelines, which acknowledge that redistributive reforms “*facilitate broad and equitable access to land and inclusive rural development*” (par. 15.1). This applies particularly to contexts “where a *high degree of ownership concentration is combined with a significant level of rural poverty attributable to lack of access to land*” (par. 15.3). As the case studies in this volume show, this applies, for instance, in Andalusia, where privatisation policies and the Andalusian Law of Agrarian Reform (LARA), whose main objective has been the increase of economic profitability of big exploitations rather than land redistribution among landless workers, have contributed to a high degree of land concentration. At the same time, Andalusia shows the highest unemployment rate in the EU, with 35.42% of the active population, and 40% in the rural area. In the current context of severe cuts in social security schemes, direct land becomes a means of securing the livelihoods of the unemployed workers who claim access to land by occupying idle public lands.

Redistributive reforms as contained in the Tenure Guidelines, i.e. for social, economic and environmental reasons (par. 15.3), also apply in other parts of Europe as a policy measure to counter high land concentration and to allow young prospective farmers and other marginalised groups to obtain access to land. The case study on Vienna shows that redistributive reforms allowing access to land for marginalized groups can also be relevant in urban contexts. It should be clear however, that redistributive reforms will not be sustainable if they are not accompanied by corresponding changes in policies and laws. This is also underlined by the Tenure Guidelines (par. 15.6) and would mean in the European context that *inter alia* the CAP, as one of the main drivers of land concentration, would have to be revised.

Regulation of land markets

As outlined above, the current problems regarding tenure of land and natural resources in Europe are triggered by current policies at national and regional level. The first issue we identified is the privatisation and liberalisation process. Regarding land markets, the Tenure Guidelines call upon states to “*take measures to prevent undesirable impacts on local communities [...] and vulnerable groups that may arise from, inter alia, land speculation, land concentration and abuse of customary forms of tenure. States and other parties should recognize that values, such as social, cultural and environmental values, are not always well served by unregulated markets. States should protect the wider interests of societies through appropriate policies and laws on tenure.*” (par. 11.2) This clearly supports claims for the need to assess and revise the way land markets are functioning in Europe today, since they are failing to attain core objectives of good governance of tenure, and rather promote land concentration and speculation. What is more, the Tenure Guidelines explicitly underline the duty to regulate land

markets, particularly making sure that the tenure rights of small-scale food producers are protected, thereby acknowledging *“the importance of small-scale food producers for national food security and social stability”* (par. 11.8).

One of the instruments European states can and should use to regulate land markets in order to stop and reverse the on-going trends towards land concentration and speculation, are taxes. The role taxes can play in order to achieve broader social, economic and environmental objectives is also emphasized by the Tenure Guidelines, which recommend them in order to prevent *“undesirable impacts that may arise, such as from speculation and concentration of ownership or other tenure rights.”* (par. 19.2) Higher taxes make it less interesting to acquire large stretches of land for investors or land owners.

Revise investment policies

But this will not be enough. In order to address the existing problems regarding tenure of land and natural resources in Europe also current investment policies have to be revised. As mentioned earlier, current investment policies in Europe – in particular the subsidy scheme of CAP – are fostering a land concentration process and an industrial model of agriculture, big infrastructure and renewable energy in a way that marginalises family farmers and is destroying sustainable peasant agriculture. This is not in line with the provisions of the Tenure Guidelines, which underline that responsible governance of tenure should encourage and promote responsible investments in order to increase sustainable agricultural production (par. 12.1). Instead of encouraging unsustainable models that benefit a few number of agro-industrial enterprises, the Guidelines call for investment policies *“that support broader social, economic and environmental objectives under a variety of farming systems.”* (12.1) In view of promoting sustainable production of healthy food, the Tenure Guidelines further recognise the importance of small-scale food producers and call upon states to support investments by these smallholders. (par. 12.2) This supports the demands raised by ECVF and many other organizations to reform the current subsidy scheme of the CAP and to support peasant agriculture for sustainable food production.

The Tenure Guidelines further call for a holistic and sustainable approach in the governance of tenure (par. 3B5), which is not compatible with the current biased governance approach that prioritises capital accumulation, economic growth, speculation, big infrastructures, etc. and neglects local, sustainable and just food production systems as well as environmental sustainability for future generations. In this context, the Tenure Guidelines also recognize that land has also social, cultural and spiritual values (par. 9.1).⁵

As the country studies show, land grabbing is also happening in Europe. In this context, the Tenure Guidelines call for states to adopt measures to protect *“legitimate tenure rights, human rights, livelihoods, food security and the environment from risks that could arise from large-scale transactions in tenure rights.”* (par. 12.6) One of the measures that the Guidelines foresee in order to counter land grabbing is the introduction of ceilings for permissible land transactions. As the country studies show, the need for measures against land grabbing is particularly high in countries like Bulgaria, Ukraine, Serbia and Romania. However, as the examples from other countries like France, Spain or Germany show, the acquisition of large tracts of agricultural lands by a number of different actors is rampant throughout Europe. In addition to these protective measures, the Guidelines call upon states to promote production and investment models that do not result in the large-scale transfer of tenure rights to investors (par. 12.6) – thus supporting those voices that challenge the dominant narrative that big investment projects and industrial agriculture is needed to provide enough food, and the frameworks which facilitate or promote large-scale land acquisitions in some European states.

More generally, when it comes to investment projects the Tenure Guidelines underline the need for *"prior independent assessments on the potential positive and negative impacts that those investments could have"* (par. 12.10) a minimum standard that is lacking in several – if not all – countries so far (see, for instance, the Sardinia case). What is important to stress is that the Guidelines are very clear that these assessments have to be independent and made before the investment is approved, thus pointing to minimum requirements that decision making processes on land-based investments have to follow. In addition, it is important to underline that it is specified that the impact assessments do not only refer to environmental impact assessments but also to the impacts these investments could have *"on tenure rights, food security and the progressive realization of the right to adequate food, livelihoods and the environment."* (par. 12.10) In the European context this means that the impacts of an investment project on land concentration, the change of use of agricultural land and the dismantling of the local peasant economy need to be assessed and taken into account when deciding whether to approve it or not.

Land use change and spatial planning

Another of the characteristics of current agricultural policies is that it encourages the transformation of agricultural lands for non-agricultural uses, in the European context often – but not always – for infrastructure projects. As it is the case of the Notre-Dame-des-Landes airport in France, these projects and the loss of access to land and other resources that come with them are often justified by referring to the public purpose of the project. However, as the French case shows, the claim to serve a public purpose may serve as a justification for capital accumulation. Therefore it is rightly questioned by those who are affected on the basis that the supposed public purpose is simply stipulated and used as a justification, without being properly defined. The Tenure Guidelines support these voices, specifically in the cases of expropriation underlining that states need to *"clearly define the concept of public purpose in law, in order to allow for judicial review."* (par. 16.1) In addition, they call for proper consultation in cases of expropriation, making it clear that *"anyone likely to be affected should be identified, and properly informed and consulted at all stages."* (par. 16.2)

Spatial planning is another issue that is linked to the problems of governance of land, fisheries and forests in Europe. In fact, and as the case examples in this collection show, there is either simply a lack of consistent spatial planning, or the plans contribute to the trends of marginalising peasant agriculture, increasing land concentration and rapidly advancing changes in land use. In this context, the Tenure Guidelines call for spatial planning that promotes responsible governance of tenure. (par. 20.1) In order to do so spatial planning needs *"to strive towards reconciling and prioritizing public, community and private interests and accommodate the requirements for various uses, such as rural, agricultural, nomadic, urban and environmental."* (20.3) The need for changes in the governance of tenure that favour peasant agriculture, is particularly emphasized by the recognition of the *"need to promote diversified sustainable management of land, fisheries and forests, including agro-ecological approaches"* (par. 20.5), in order to ensure sustainable food production and to meet the challenges of climate change. Following these recommendations and taking into account the situation in Europe that emerges from the examples in this collection, it is clear that there is an urgent need to assess current policies of spatial planning, and to revise them. It is crucial to underline that, regarding the process of the needed changes, the Tenure Guidelines clearly ask for *"wide public participation in the development of planning proposals and the review of draft spatial plans to ensure that priorities and interests of communities, including indigenous peoples and food producing communities, are reflected."* (par. 20.4)

Lack of participation in decision-making processes

This leads us to another issue regarding the governance of natural resources in Europe that becomes clear from the country studies: apart from the policies themselves, there are several problems linked to the ways these policies are developed and implemented, and, more generally, the way decisions are taken. What basically all cases show, is that there is a blatant lack of participation at different levels. This ranges from the project level (as, for instance, in the cases of Italy or France) to the level of spatial and use planning, but also at the very level of the designing of legal frameworks and regulations. Directly related to this is a lack of transparency and a clear problem of obscure decision taking in the context of land tenure, as all studies reveal. Claims for adequate participation and transparency are supported by the guiding principles of the Tenure Guidelines, which call upon states to engage with and seek the support of those who *“could be affected by decision, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.”* (par. 3B6); and to clearly define and publicise policies, laws, procedures and decisions (par. 3B8). The case of Notre-Dame-des-Landes in France and the case of “Furtovoltaico” in Italy provide examples of how states have failed to ensure proper consultation and participation processes. The Italian case further illustrates the lack of available information through the impossibility of the committee “S’Arrieddu for Narbolia” to access all relevant information from the municipality.

The general call for adequate participation in decision-making processes and transparency in the Guidelines is reinforced by provisions in particular contexts, which apply in several country cases. This refers, for instance to the context of investment projects that require consultations with all affected parties (par. 12.10), or in cases of expropriation – such as in the case of the Notre-Dame-des-Landes airport – where proper consultations are a requirement contained in the Guidelines. It has already been mentioned that the Guidelines are also emphatic in calling for inclusive decision making processes and public discussion on public lands and their use, including the disclosure of all relevant information (par. 8.4). Transparency is also needed on available (public) lands in order to facilitate access to these lands for marginalised groups.

In relation to transparency, the case examples from Serbia, Romania and the Ukraine show that decision-making is further sometimes obscured and influenced through corruption. The Tenure Guidelines support the call for measures in this respect, notably the need to address conflicts of interest and by adopting clear rules and regulations. (par. 6.9)

Still in the context of the reluctance of authorities at different levels to engage with citizens when it comes to decision making on tenure-related issues, several case studies shed a dim light on the way states react to direct actions by citizens and movements to claim tenure rights and participation. As we have seen, the unequal access to land, forests and fisheries in Europe in a context of multiple structural crises has recently consolidated and fuelled protests, demonstrations and direct actions to (re)claim access to land. In the cases of Italy, Spain, France or Austria, protest actions or squatting to claim access to land have led to repressive measures. In many cases there is also a tendency to criminalize protest and direct action. This criminalisation can take the form of arrests, violent repression, abusive trials or evictions. Here, the Tenure Guidelines clearly call for the respect of human rights, including civil and political rights, and underline that states have to *“observe their human rights obligations when dealing with individuals and associations acting in defence of land, fisheries and forests.”* (par. 4.8)

In cases of pro-active claiming of access to land through squatting, as in Vienna, or land occupations to oppose to expropriation, the Tenure Guidelines give people protection from forced evictions. They underline that evictions should be avoided (par. 16.8), and that where evictions are considered to be justified, states have the responsibility to *"conduct such evictions and treat all affected parties in a manner consistent with their relevant obligations to respect, protect, and fulfil human rights."* (par. 16.7) What is more, the Guidelines clearly underline that evictions should not *"result in individuals being rendered homeless or vulnerable to the violation of human rights."* (par. 16.9) This needs to be taken into consideration in cases of occupation and squatting, such as in the case of the ZAD in France, although it is necessary to carefully assess the conditions under which evictions take place.

In the current situation of marginalisation of small-scale farmers and of land concentration, land occupations and squatting should not simply be treated as a criminal offence. Instead, states and local authorities should take into account that these occupations are in many cases direct actions to claim or defend rights, and are therefore acts of civil disobedience, rather than criminal offense. In this sense, and particularly in cases where the lack of access to land and natural resources is a real problem, land use through squatting in rural and urban contexts can even be considered as legitimate claims giving informal tenure rights to the squatters. These rights are protected by the Tenure Guidelines, which call upon states to recognise them, *"in ways that recognize the reality of the situation and promote social, economic and environmental well-being."* (par. 10.1) Direct actions aiming at accessing land for sustainable food production through peasant farming in a context of de facto impossibility to access land because of policies that fail to ensure equitable access to resources, like the ones presented in the country studies should therefore be recognised as such and not simply be dealt with as criminal offence. Therefore, the informal rights acquired through squatting should be recognised in accordance with the Tenure Guidelines, which specifically underline that states' actions need to be in line with legal requirements; and also particularly emphasises that forced evictions should be avoided, even in cases where it is not possible to provide legal recognition to informal tenure. (par. 10.2, 10.6)

Conclusion

As the analysis based on the Tenure Guidelines clearly shows, there is an urgent need to address existing problems of governance of tenure in Europe. Therefore, current policies and frameworks both at national and the EU level urgently need to be revised. In this respect, the Tenure Guidelines, as a broad and legitimate instrument, provide a basis to analyse existing problems and contain several elements for how these reforms should look like.

In addition, the analysis shows that the Tenure Guidelines support many of the claims made by communities, social movements and civil society organisations. This includes the specific claims made in the concrete situations described in the country studies, as well as the more general demands presented in the introduction of this collection. Concretely, the Tenure Guidelines do support demands for a reorientation of policies in the context of land, fisheries and forests in Europe, in order to stop and reverse land concentration and land grabbing, to ensure equitable access to land and natural resources, with a particular focus on groups that are currently marginalised, and the reorientation of land use for sustainable food production instead of profits for some powerful actors. Given the role the EU and several European governments played during the elaboration of the Tenure Guidelines, they have a special moral and a legal responsibility to implement them. As the present study clearly shows, there is a need to implement them also at the domestic level.

Therefore and in order to do so in accordance with the spirit of the Tenure Guidelines, states should start a policy discussion at national and EU level in order to identify the problems of governance of tenure and set priorities for action. The Tenure Guidelines call for an inclusive and participatory process in this regard, also in order to monitor measures that are taken with respect on their impact on *“improved governance of land, fisheries and forests, and on improving food security and the progressive realization of the right to adequate food [...] and sustainable development.”* (par. 26.2)

What becomes clear from this study is that we need an agrarian reform in Europe. Besides changes in national policies and frameworks, there is an urgent need to revise and reform the CAP due to the role it plays in fostering land concentration and an unsustainable agricultural model. A first step towards this needs to be an unbiased assessment of governance of tenure in Europe today. European small-scale farmers and CSOs have an important role to play in this and should be supported in their efforts, including by specialised agencies such as FAO, as included in the Tenure Guidelines (par. 26.3).

Civil society has been denouncing the negative effects of the CAP and calling for its overhaul for a long time, providing many concrete proposals.⁶ One concrete measure that is proposed is an EU directive on the access to land for small-scale farmers and prospective farmers. These and other proposals show ways towards real alternatives to the current model, alternatives based on sustainable production of food through peasant agriculture. It is time that these proposals are taken into account in inclusive processes that should trigger a large public debate on the use of natural resources, both at national level and the EU level.

Endnotes

1. CFS, 38th (Special) Session, “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security” (CFS 2012/38/2). Rome, 11 May 2012. <http://www.fao.org/docrep/meeting/025/md708e.pdf/>.
2. Tenure is defined by FAO as the relationship, whether defined legally or customarily, among people with respect to land (including associated buildings and other structures), fisheries, forests and other natural resources. The governance of tenure therefore refers to the questions of who decides which resources can be used by whom and under which conditions, and how this decision making should be done. (See FAO, Land Tenure and Rural Development, in Land Tenure Studies 3, Rome, 2002, <http://www.fao.org/DOCREP/005/Y4307E/y4307e00.htm#Contents>, accessed on May 10, 2013).
3. The list of treaties constituting the core international human rights law and the list of States parties can be found on the website of the Office of the High Commissioner for Human Rights: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>
4. International customary law refers to norms that are not vested in treaties, such as declarations. This applies, for instance, to the Universal Declaration of Human Rights (UDHR) – as opposed to human rights treaties, such as the International Covenant on Economic, Social and Cultural Rights. While human rights treaties have state parties that have – or not – ratified them, international customary law applies to all states.
5. Par. 9.1 refers explicitly to “indigenous peoples and other communities with customary tenure systems”. However, these different dimensions of land apply to land in general.
6. See the cap defended by ECVC at <http://www.eurovia.org/spip.php?article6&lang=it>.