

WORKSHOPS ON THE IMPLEMENTATION OF THE ***Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries*** ***and Forests***

ORGANIZED BY EUROPEAN COORDINATION VIA CAMPESINA (ECVC)

IN COLLABORATION WITH CROCEVIA, TNI AND FIAN

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From 27 to 29 January 2015, a seminar was held in Rome at the initiative of European Coordination Via Campesina (ECVC) with support from FIAN, TNI and Crocevia. The aim of the seminar was to provide training to the members of various farmers' organizations and civil society organizations (CSO) from the Europe and Central Asia region of the FAO (from Spain to Kyrgyzstan) on the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests* ("the Guidelines")¹. The Guidelines were adopted in 2012 within the framework of the Committee for Food Security (CFS), with the result that intergovernmental organizations or civil society organizations can take part in negotiations through the Civil Society Mechanism (CSM). The organizers of this workshop, all of whom are members of organizations that took part in the negotiations, now want to move on to the implementation stage; the seminar forms part of this strategy. This document aims to set out the activities, basic problems and conclusions that emerged over the three days of inspiring and innovative discussions, which concluded with a public event at the FAO headquarters. The document is divided into three sections: the first part offers an overview of the situations in each of the countries, including differences and common characteristics, as presented by the participants themselves; the second part explores the content and nature of the Guidelines and how they relate to the various national situations; and the conclusion contains a review of the public event at the FAO and an outline of the points to be covered at the upcoming seminar to be held in Brussels in April 2015.

Country presentations

The workshops brought together 25 participants from 20 different organizations in 15 countries. To organize and guide the work of the seminar, it was also necessary to include a group of facilitators, who came from four different organizations: ECVC, FIAN, Crocevia and TNI. The countries represented were: Serbia, Kyrgyzstan, Georgia, Albania, Armenia, Hungary, Azerbaijan, Austria, Italy, Belgium, Denmark, Spain, Romania, Germany and Turkey. At the plenary session on the morning of the first day, 10 of the participants gave presentations on the political, legal and social situation with regard to control of and access to arable land in their respective areas. Two main points came out of these presentations: on one hand, each country

¹Many civil society organizations prefer to use only these initials: DT, to limit the reference to the word "volunteers" and to concentrate more on the appliance of the States

had a different political and historical context and a different landscape of social organizations; on the other hand, many common points were raised, which surprisingly highlighted a number of cross-cutting processes that were similar right from one end of the region to the other, and which formed the driving force of the workshops. Right across the continent, small farmers and producers were facing the same problems: land grabbing and increasing concentration of land in the hands of the largest establishments. The main differences between the participants were based both on their respective countries' historical foundations inherited from the Cold War, and on relations with the State. The first main point was that with the end of the USSR, the States of Central Asia went through political and social upheavals that led to the reformulation of economic structures. Places that, around 20 years previously, used to export most of their agricultural produce to Russia (in the case of Georgia, Azerbaijan, Armenia and Kyrgyzstan), now succumbed to commercial and economic stagnation. Public land was redistributed in a fragmentary fashion, sometimes to the benefit of the former political executives of these States. The integration of Central European countries (such as Hungary and Romania) into the European Union, or their proximity with the EU market (in the case of Albania, Serbia and Turkey) were key factors in determining their land tenure systems and agricultural sectors.

Secondly, levels of engagement and processes used to claim fairer access to land varied from one area to another. For example, in Spain (notably in the Basque country and Andalusia) there were several cases of land occupation, whereas further towards the north of Europe the focus tended to be on directly influencing regulatory frameworks. The state, culture and strength of social organizations also had an impact on these relationships. Thus, in Central Asia, farmers' organizations have a presence, even if they are not very well developed or networked, but they are often discredited by Governments. These interactions between the authorities and farmers' and civil society organizations need to be integrated into the implementation process of the Guidelines. Indeed, in places where legal and/or political systems function poorly, or are even corrupt, the impact of a human rights-based argument is less predictable.

There were many more common points than differences. In general, in all areas we are witnessing appalling concentration of land, creating considerable problems when it comes to gaining and maintaining access to land. This threatens the durability of the agricultural sector in the region, particularly of the peasant farming community. In this context, farmers' organizations are witnessing cases of land grabbing, which threatens the ability of producers and citizens to exercise their right to food and uses land in a way that conforms neither with local populations' traditional practices, nor with the principles of food sovereignty. The information provided by the participants in their presentations was often both qualitative and quantitative in nature. During the discussions, this information was then supplemented and contextualized with further information from the *Hands off the Land report: "the land concentration, the land grabbing and people's struggles in Europe"*²(which, it must be noted, only relates to the European Union).

All participants were skeptical about the agricultural and economic development models that were generally preached by their respective States, the EU (in particular the Common Agricultural Policy (CAP)) and international organizations (such as the FAO and the World Bank), and that led to the reinforcement of large-scale farms, whose social and environmental impact was much criticized and questioned. To begin with, large farms empty rural areas of their populations because they offer very few job opportunities, especially compared with smaller and family farms, which produce food with a high added value. Next, they tend to over exploit the soil, leaving it devoid of nutrients. This disrupts ecosystems, which must then be compensated by using pesticides and manure, which eventually leaves the farm with little economic viability. Lastly, they contribute to a centralized and specialized agricultural system, which is based on international trade and developed in a way that disadvantages local populations.

With regard to land, the calculation is simple: a farm that covers a large area has a large capacity for investment, which is further encouraged by direct payments from the CAP in the European Union. When farms with smaller investment capacity are forced to compete with these large farms to purchase land, the large farms continue to grow stronger, even though the social and environmental benefits offered by family farming are much greater. In the case of Denmark or Belgium for example, the income generated by one hectare of agricultural activity is generally not high enough to offset the investment made to acquire that land.

Lastly, another of the major cross-cutting points that arose from the debates between the participants related to competition for agricultural land. Urbanization, contamination of soil with artificial products, and increasing numbers of big industrial projects – based on either agriculture or infrastructure and generally developed without, or even in breach of, human rights, in particular the right to food – put more pressure on land, at the expense of farmers. This applied in the case of an airport project at Notre-Dame des Landes in France, a high-speed railway line (connecting large cities) in the Basque Country, open-cast mines such as Rosia Montana in Romania, or industrial renewable energy projects in Turkey, on land where olives are currently cultivated. In contrast to such projects, the participants called for the development of rural infrastructure to market their products, reduce production costs and free up markets.

When the land situation in each country was presented, the people who had the best understanding of the Guidelines attempted to link each specific example with key words³, which allow us to introduce the subject for discussion.

concentration, Land grabbing and people's struggles in Europe, June 2013, http://www.fian.be/img/pdf/2013_06_Land_in_Europe-jun2013_final.pdf

The Voluntary Guidelines on Land Tenure: What are they? Who are they for? How do they work?

The afternoon began with a welcome speech by Rolf Hackbart, Deputy Director of the FAO Office for Partnerships, Advocacy and Capacity Development. He recalled that there were various parallel interpretations of the Guidelines, because some were limited to a “cadastral” vision, i.e. they were satisfied to see that the Guidelines contained a call for the establishment of an operational land market designed simply for buying, renting and selling small holdings – “The market buys everything”. This vision was incomplete. The holistic vision, on the other hand, took into account the social, environmental, political and human-rights impact, which lay at the heart of the land Guidelines. He stressed that the Guidelines were simply a tool to facilitate the solutions proposed by civil society organizations. They were the source of struggles, conflicting interests and mixed feelings. He said that the Guidelines were in fact a sort of 'umbrella' which was used to bring together all the organizations and contribute to dialogue with governments, within the framework of the FAO. He then highlighted the real possibilities for cooperation between the FAO and civil society organizations, in particular in terms of human skills, research and political openings, and called for this cooperation to be strengthened.

After Hackbart left, for the remainder of the day and the following day we focussed on studying the Guidelines in depth. After setting out the fundamental origin and concepts of the Guidelines, we focused on their contents. The biggest task was to analyze practical cases, in working groups, in order to apply the Guidelines to practical cases. This document sets out the main points that were discussed.

The starting point of our discussion was genealogy. Where do the Guidelines come from? It was pointed out that the Committee of World Food Security (CFS) was reformed following the food crises of 2007-2008, which were caused, at least in part, by financial speculation on food commodities. Millions of people suffered from hunger and malnutrition. To improve its governance in such situations, the CFS brought in stakeholders from the private sector, international institutions and civil society organizations. Although governments retained their decision-making power because they were the ones with voting rights, the involvement of these new stakeholders in drawing up international standards considerably changed the legitimacy and credibility of the CFS. The Guidelines are the first document to have been negotiated with the CSO, and now the task is to effectively implement them. These seminars thus form part of an international agenda.

The aim of the workshop was to allow the participants to take ownership of the Guidelines for their own purposes. Before the workshop, the participants were invited to take note of background documents, including: the text of the Guidelines, the Handbook⁴, contextual articles and the *Hands off the Land* report

(see above). However, a cursory reading is not enough to understand the substance of the Guidelines, particularly for an audience that is little accustomed to the legal approach of the farmers struggles. To define the concepts and interpret the Guidelines, the Handbook often proved to be very useful throughout the discussions.

What is the legal character of the Guidelines? Are they a law? The Guidelines are “voluntary” and constitute an instrument of *soft law*, in contrast to legally-binding instruments (*hard law*)⁵. The seminar provided the opportunity to specify that these Guidelines lie within a legally-binding international framework; that the human rights-based principles on which they are built specify the obligations not only of State leaders (both at the national level and beyond their borders, outside their territory) but also of private companies; and that the States that have adopted these Guidelines have proposed that there should be an international standard to manage land. The Guidelines can therefore be used as a strong political argument in negotiations; they are a legal tool to ensure that mandatory rights are respected. If the Guidelines are breached, this means, indirectly, that a State or a company is not respecting its human rights obligations. Essentially, the Guidelines provide for interpretation of mandatory rights. Nevertheless, it is now evident that these concepts are not easy to grasp and that we must continue working hard to clarify them at the next seminars.

We also dealt with the actual contents of the Guidelines. One of our aims was for the participants to take the text, refer to it and understand its internal logic so that they could use it individually at a later date. A linear reading of the Guidelines was a useful way to start off this process. We went through chapter by chapter, highlighting the most relevant points that could be used in Europe. Indeed, as the Guidelines mention, context is essential when it comes to application, and Europe has quite a particular regulatory context with regard to rules that were originally designed to be applied to the "Southern" countries.

Chapter 1 sets out the spirit of the Guidelines; their objectives are rooted in the realization of the right to food, human rights and the fight against poverty, particularly taking into account the interests of marginalized populations. Paragraph 1.1 stipulates that “*the present Voluntary Guidelines aim to improve Responsible Governance of Tenure of Land, Fisheries and Forests, for the benefit of all, by paying close attention to vulnerable and marginalized populations. Their purpose is to make Food security a reality, to gradually exercise the right to adequate food, to eliminate poverty, to ensure that the populations have sustainable livelihoods, to ensure social stability, housing safety, rural development, environmental protection and sustainable economic and social development*”. This spirit seems to get away from restrictive interpretations such as the "Land Registry", which are inconsistent with the contents of the Guidelines.

FAO, *popular Handbook for the discussion and the application of the Guidelines for a Responsible Governance of Tenure of Land, Fisheries and Forests in the context of national food safety*, 2015 (being finalised)

Similarly, this chapter underlines the global scope of the stated rules. It was later recalled that the articles could not be read in isolation; the reader must always refer to the general principles and principles of implementation contained in Chapter 2. This same chapter also specifies that the stated obligations are addressed to States and private companies which 'invest' in the lands, fisheries or forests. Thus, non-State actors must respect human rights and legitimate land tenure. It is explicitly recalled that human rights are universal, inalienable, interdependent and inextricably linked and that the Guidelines guarantee respect for economic and social rights such as access to land, as well as first-generation civil and political rights.

Chapter 3 deals with the recognition of legitimate rights, such as common laws and other informal land rights. It also mentions the rules that apply to public land (common goods or *commons*). Chapter 4 forms the main body of the Guidelines. It looks into investments, the duties of investors and States and the rights of the people involved in an investment. This chapter thus deals with land grabbing, despite the fact that large-scale investment in land is not formally prohibited by the Guidelines. It covers speculation, investments and redistributive reforms as well as highlighting the extraterritorial responsibilities of States. The final chapters look into other, less central aspects of peasant struggles: Chapter 5 deals with administration and taxation; Chapter 6 covers actions taken to address climate change; and Chapter 7 relates to the implementation, follow-up and evaluation of the Guidelines.

In order to better understand the Guidelines, the situation in Romania was described in detail as a way of linking the general concepts to a real-life situation. Romania was chosen as a sample case partly because of the quality of the relevant documentation, and also because this case illustrates various current land access problems in Europe, particularly with regard to the involvement of private stakeholders, as well as land grabbing in Eastern Europe, the lack of transparency in land governance, the impact of corruption and the vulnerability of small farmers. Following this overview, the working groups proved to be very useful for answering precise, conceptual questions and addressing individual doubts, especially as they offered the chance to explore a subject in more depth, depending on the particular expectations of the organizations. One group focused on the ways in which the Guidelines could be useful in dealing with land speculation; the group went through the Guidelines in detail to identify the most relevant articles and principles, notably paragraphs 11.3 and 4.6, in view of the principles of non-discrimination and the idea for a land fund (paragraph 15.1). Another group focused on cases of expulsion and occupation (Chapter 4, paragraph 16) and land use (paragraph 8.1), setting out the specific concerns and the different ways in which organizations had dealt with similar problems. The final group focused on common, cross-cutting issues that were also mentioned in the Guidelines, such as: gender (paragraph 6.8), transparency (paragraph 12.9) and role of the government (paragraphs 11 and 12). The working groups were also able to think about how the Guidelines could be put into practice in local projects and activities, in terms of strategies and appeals. In any case, the above points will be addressed during the second seminar, to be held in Brussels in April 2015.

Public event at the FAO

Our workshop ended with a meeting of FAO representatives on the morning of 29 January. At the meeting, 40 people were present (including representatives of the FAO, FIDA, the World Bank, and the participants of the workshop). We began by presenting our conclusions and activities. The transcript of the speech given at that session may be of interest as supplementary reading to these notes¹.

The Central Europe-Asia office presented its programmes and strategies for implementation of the Guidelines in the region. The technical staff also presented their activities. Lastly, Rolf Hackbart renewed his call to strengthen cooperation with civil society organizations.

The participants emphasized the need for consistency between the policies of the FAO and FIDA, which also back up Via Campesina and other traditional stakeholders in the market. Like Hackbart, they insisted on the need for cooperation aimed at maintaining respect for organizations' autonomy and reinforcing existing organizations, rather than top-down reorganization of social movements.

A number of contrasting opinions were expressed, particularly regarding the nature of the Guidelines, which were sometimes incorrectly seen as “good practices” rather than an internationally-agreed interpretation of existing human rights; and regarding the support programmes for the development of land registers in Central Asia and Eastern Europe, which were seen as solutions even though real experience and studies show that these isolated programs are more likely to exacerbate problems of land access for small producers.

Spaces for cooperation could be created as a way to develop an observatory for land tenure; initiate negotiations with the European Union and Member States to persuade them to consider land-related problems; reinforce organizations, especially in Central Asia; and encourage dissemination of the Guidelines in the Central Europe-Asia region.

In the afternoon, we concluded our workshops by carrying out a self-assessment. According to the participants, the workshop successfully had helped them to better understand the Guidelines and allowed them to meet up to coordinate land strategies in Europe. On the other hand, doubts remained about the practical application and nature of the Guidelines, for example: what specific knowledge did people need to be able put their contents into practice? How capable were the organizations of carrying out normative work with public institutions? A more thorough understanding of the content was needed. Finally, activities needed to be strengthened at the national level, for example by disseminating translated versions of the Guidelines and holding national seminars, all of which could be facilitated by establishing regional or national platforms.

¹