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The right of access to agricultural land? Comments on human rights and land grabbing

Diritto di accesso ai terreni agricoli?
Osservazioni sui diritti umani e sull'accaparramento di terra

This article aims to establish a theoretical framework for the concept of the right of access to agricultural land (agricultural land resources) as a mechanism for safeguarding human rights in the context of land acquisitions. According to contemporary soft law instruments, the right of access to agricultural land may be recognised as an autonomous concept. This concept is characterised by a specific dualism, encompassing both the individual and collective dimensions. The article analyses the mechanisms of human rights violations resulting from large-scale land acquisitions, paying particular attention to the right to food, property rights, and the collective rights of indigenous peoples and local communities. The right of access to agricultural land is a broader concept than the classic right of ownership. It encompasses various forms of land tenure, including customary and informal ones, and requires the application of different protection mechanisms for the individual and collective dimensions.

Keywords: land grabbing, right to access agricultural land, right to food, collective rights, indigenous peoples, VGGT, UN Declaration on the Rights of Peasants, FPIC (free, prior, and informed consent)

L'obiettivo del presente articolo è definire un quadro teorico per la concezione del diritto di accesso ai terreni agricoli (alle risorse fondiarie agricole) come meccanismo di tutela dei diritti umani nel contesto dell'acquisizione di terreni. Secondo gli strumenti contemporanei di soft law, tale diritto può essere riconosciuto come concezione autonoma, caratterizzata da un dualismo specifico che integra la dimensione individuale e quella collettiva. Nell'articolo sono stati analizzati i meccanismi di violazione dei diritti umani derivanti dall'acquisizione di terreni su larga scala, con particolare attenzione al diritto al cibo, ai diritti di proprietà e ai diritti collettivi dei popoli indigeni e delle comunità locali. Il diritto di accesso ai terreni agricoli si configura un concetto più ampio del tradizionale diritto di proprietà, includendo

diverse forme di proprietà terriera, comprese quelle consuetudinarie e informali, e richiedendo meccanismi di tutela sia individuali sia collettivi.

Parole chiave: accaparramento di terra, diritto di accesso ai terreni agricoli, diritto al cibo, diritti collettivi, popoli indigeni, VGGT, Dichiarazione ONU sui diritti dei contadini, FPIC (consenso libero, preventivo e informato)

Introduction

The phenomenon of *large-scale acquisition of agricultural land*, commonly referred to as *land grabbing*, is one of the most complex challenges facing contemporary agricultural and human rights law. After the 2007–2008 food and fuel crisis which caused a sharp rise in food and fuel prices, there was an unprecedented increase in investment in agricultural land, particularly in developing countries. Between 2000 and 2020, transactions involving more than 33 million hectares of land were concluded worldwide.¹ The scale of this phenomenon makes it one of the most important natural resource management issues of the 21st century.

Large-scale land acquisitions lead to violations of fundamental human rights, including the right to food, the right to an adequate standard of living, property rights, and the rights of indigenous peoples and local communities to land and natural resources. As aptly noted in the doctrine, excluding local communities from access to land, water, and other natural resources leads to violations of their fundamental rights, exacerbates poverty, and contributes to forced migration.² Empirical research indicates that the total loss of income to local communities as a result of land grabbing amounts to approximately \$34 billion per year—an amount comparable to the World Bank's annual development assistance budget.³

In response to these challenges, attempts have been made in international law to establish a framework aimed at protecting access to agricultural land as part of the realization of human rights. Three instruments are of particular importance: the Voluntary Guidelines on the Responsible Governance

¹ J. Lay, W. Anseeuw, S. Eckert, I. Flachsbarth, C. Kubitzka, K. Nolte, M. Giger, *Few development benefits, many human and environmental risks. Taking stock of the global land rush. Analytical Report III*, Bern – Montpellier – Hamburg – Pretoria 2021, p. 9.

² O. De Schutter, *The Green Rush: The Global Race for Farmland and the Rights of Land Users*, "Harvard International Law Journal" 2011, vol. 52, no. 2, p. 504.

³ *Squeezing Africa dry: behind every land grab is a water grab*, Barcelona 2012, p. 3.

of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) adopted by the FAO Committee on World Food Security in May 2012,⁴ the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, adopted by the UN General Assembly in December 2018⁵ and the Principles for Responsible Investment in Agriculture and Food Systems (RAI) approved by the Committee on World Food Security in October 2014.⁶

The aim of this study is to formulate a theoretical concept of the right of access to agricultural land as an instrument for the protection of human rights, taking into account the specific duality of this right: its individual and collective dimensions.⁷ The right of access to agricultural land protects both individual human rights (such as the right to food or property) and the collective rights of local communities and indigenous peoples. The analysis includes a reconstruction of international human rights standards related to access to land, identification of mechanisms for violating these rights in land grabbing processes, and an attempt to present the concept of the right to access agricultural land.

1. Land grabbing and human rights violations

Land grabbing does not have a single, universally accepted legal definition, but is generally understood as the large-scale acquisition or lease of land (over 200 hectares) by foreign entities, resulting in the deprivation of local communities' access to land and other natural resources, without their actual consent and often in violation of their rights. The Tirana Declaration, adopted in 2011 by the International Land Coalition, defines land grabbing as the acquisition of land in violation of human rights, without the prior

⁴ Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, FAO, Rome, May 11, 2012, <https://www.fao.org/3/i2801e/i2801e.pdf> [accessed on 10.11.2025].

⁵ United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, UN General Assembly Resolution 73/165 of December 17, 2018, UN Doc. A/RES/73/165.

⁶ Principles for Responsible Investment in Agriculture and Food Systems, Committee on World Food Security, Rome, October 2014, <https://www.fao.org/3/au866e/au866e.pdf> [accessed on 10.11.2025].

⁷ Y. Dinstein, *Collective human rights of peoples and minorities*, "International & Comparative Law Quarterly" 1976, vol. 25, no. 1, pp. 102–120.

consent of existing land users⁸ and without consideration of the social and environmental impacts.⁹

The process of acquiring agricultural land was determined by interrelated factors. Firstly, there was growing demand for food in industrialized countries and developing countries with large populations (China, India, the Gulf states), which prompted them to secure access to agricultural land abroad. Secondly, the growing importance of biofuels as an alternative energy source led to large areas of land being allocated to the cultivation of energy crops. Furthermore, the globalization of financial markets has made land an attractive investment, leading to land speculation. In addition, oil-producing countries are seeking alternative sources of income in the face of the gradual depletion of oil reserves and changes in the global energy paradigm.¹⁰

1.1. Violation of individual human rights

At the individual level, the fundamental human right violated by land grabbing is the right to food. This right is enshrined in Article 25(1) of the Universal Declaration of Human Rights of 10 December 1948¹¹ which states that everyone has the right to a standard of living adequate for health and well-being, including food, clothing, housing, and medical care. The binding nature of this right was confirmed in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 16 December 1966¹² according to which the States Parties recognize the right of everyone to a standard of living adequate for the health and well-being of himself

⁸ The concept of ‘use’ as used in the international acts and documents referred to in this study is fundamentally different in nature and scope from the right of use as understood in the Polish Civil Code. In the indicated scope, it is used to refer to rights other than property rights and contractual rights that constitute the basis for access to land, its use, and the collection of benefits.

⁹ Tirana Declaration, International Land Coalition, Tirana, May 23, 2011; see also M. Rulii, P. D’Odorico, *Global land and water grabbing*, “Proceedings of the National Academy of Sciences” 2013, vol. 110, no. 3, pp. 892–893.

¹⁰ K. Deininger, D. Byerlee, *Rising Global Interest in Farmland: Can It Yield Sustainable and Equitable Benefits?*, Washington 2011, pp. 25–47; S. Borras Jr., J. Franco, *Global Land Grabbing and Trajectories of Agrarian Change: A Preliminary Analysis*, “Journal of Agrarian Change” 2012, vol. 12, no. 1, pp. 34–59.

¹¹ Universal Declaration of Human Rights adopted and proclaimed by General Assembly resolution 217 A (III) on December 10, 1948, A/811 of 16 December 1984.

¹² International Covenant on Economic, Social and Cultural Rights, opened for signature in New York on 19 December 1966 (Journal of Laws of 1977, No. 38, item 169).

and his family, including adequate food, clothing, housing, and continuous improvement of living conditions.

The UN Committee on Economic, Social and Cultural Rights, in its General Comment No. 12 on the right to adequate food of 12 May 1999¹³ provided an authoritative interpretation of Article 11 of the ICESCR. The Committee specified that the right to food is realized when every man, woman, and child, individually or in community with others, has physical and economic access at all times to adequate food or means for its procurement (para. 6 of the Observation). Of key importance here is the Committee's indication that the right to food does not mean a minimum calorie intake, but access to food in the context of the broader right to an adequate standard of living. The Committee emphasized that an important element of this realization is access to productive resources, including in particular land (paras. 12–13). Access to land is crucial for the full realization of the right to food, especially in rural communities and among indigenous peoples.

In the context of land grabbing, the right to food is violated in several ways. First, local communities lose access to land that they previously used to produce food for their own needs. Second, the shift in agricultural production towards monocultural export production or the cultivation of crops for biofuels leads to a reduction in the availability of food on local markets. Studies show that over 60% of crops produced on land acquired by foreign investors are destined for export rather than to meet the needs of local communities.¹⁴ The loss of land results in a lack of income, which limits economic access to food. As a result, both physical *availability* and economic *accessibility* are compromised.

1.2. The collective dimension of rights violations

Land grabbing also violates the collective rights of indigenous peoples and local communities to land, territories, and natural resources. The collective nature of these rights fundamentally distinguishes them from individual rights as they belong to the group as a whole, not to its individual members, and their protection requires specific legal mechanisms. Convention No. 169 of the International Labour Organization concerning Indigenous and Tribal

¹³ General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999, UN Committee on Economic, Social and Cultural Rights, UN Doc. E/C.12/1999/5.

¹⁴ *The truth about land grabs*, <https://www.oxfamamerica.org/explore/issues/humanitarian-response-and-leaders/hunger-and-famine/land-grabs/> [accessed on 11.11.2025].

Peoples in Independent Countries of 27 June 1989¹⁵ regulates in detail in Articles 13–19 the collective rights of these peoples to land and natural resources. According to Article 14(1) of the Convention, the rights of ownership and possession of the peoples covered by the Convention to the lands they traditionally occupy shall be recognized. Importantly, the Convention protects not only formal titles, but also informal forms of land tenure based on custom. Article 16 of the Convention stipulates that indigenous peoples may not be removed from the lands they occupy, except in situations strictly defined in the Convention, and their free and informed consent must be obtained. Although the Convention has been ratified by only 23 states, it is the most advanced binding instrument of international law for the protection of indigenous peoples' land rights.¹⁶

The United Nations Declaration on the Rights of Indigenous Peoples of 13 September 2007¹⁷ places even greater emphasis on collective land rights. Article 26(1) of states that indigenous peoples have the right to the lands, territories, and resources which they have traditionally owned, occupied, or otherwise used or acquired. Article 32(2) requires the *free, prior and informed consent* (FPIC) of indigenous peoples before any project affecting their lands or territories and other resources is approved, particularly in relation to the development, use, or exploitation of mineral, water, or other resources. Although the FPIC principle is currently the most developed standard for the protection of collective land rights in international law. It requires not only that local communities be informed about planned investments, but that their consent be actually obtained as a collective decision of the community. This consent must be: free – expressed without coercion, manipulation, or intimidation; prior – obtained before any action is taken; informed – based on full, transparent, and objective information about the project and its effects, in a language understandable to the community.¹⁸ In practice, however, this principle is often violated in land grabbing processes, in which investors and state authorities either bypass consultations with local

¹⁵ Indigenous and Tribal Peoples Convention, 1989 (No. 169), International Labour Organization, Geneva, 27 June 1989, entered into force on 5 September 1991.

¹⁶ J. Gilbert, *Indigenous rights and ILO Convention 169: learning from the past and challenging the future*, "International Journal of Human Rights" 2019, vol. 23, no. 1–2, pp. 1–3.

¹⁷ United Nations Declaration on the Rights of Indigenous Peoples, General Assembly Resolution 61/295, A/RES/61/295 of 13 September 2007.

¹⁸ A. Xanthaki, *Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land*, Cambridge 2007, pp. 187–220.

communities or conduct them in a superficial manner, treating them merely as a procedural formality rather than a genuine mechanism for participation and co-decision-making.

1.3. Property rights and access to resources

The issue of land grabbing also touches on the fundamental right to property. Article 17 of the Universal Declaration of Human Rights states that everyone has the right to own property alone as well as in association with others; no one shall be arbitrarily deprived of his property. Similarly, Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms¹⁹ protects the right to property, stating that every natural and legal person is entitled to the peaceful enjoyment of his possessions.

It should be noted, however, that in many rural communities, particularly in Africa, Asia, and Latin America, customary land tenure systems prevail, which are not always formalized in the form of title deeds as understood under statutory law. These customary forms of land tenure are often collective in nature - the land belongs to the community as a whole, rather than to individuals. Here, the dual nature of land access rights is clearly evident: while property rights in civil law are individual in nature, the customary land rights of indigenous peoples are collective. This dualism leads to tensions and conflicts when the state's legal system does not recognize or sufficiently protect collective forms of land tenure.²⁰

The European Court of Human Rights, in *Saghinadze and Others v. Georgia* of 27 May 2010²¹ held that the protection of possession under Article 1 of Protocol No. 1 also covers informal forms of tenure, provided that they are protected by national law or result from long-term possession. Similarly, the African Commission on Human and Peoples' Rights in the case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* of 25 November

¹⁹ Protocols No. 1 and No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Paris on 20 March 1952, and drawn up in Strasbourg on 16 September 1963. (Journal of Laws of 1995, No. 36, item 175/1, as amended).

²⁰ L. Cotula, *Changes in "Customary" Land Tenure Systems in Africa*, Rome 2007, pp. 15–35.

²¹ Judgment of the European Court of Human Rights of 27 May 2010, *Saghinadze v. Georgia*, No. 18768/05, ECLI:CE:ECHR:2010:0527JUD001876805.

2009²² confirmed that indigenous communities have a collective right to ownership of traditionally occupied lands, even if they do not have formal title deeds. The Commission found that the expropriation of the Endorois community from their traditional lands without adequate consultation and compensation constituted a violation of Article 14 (right to property) and Article 21 (right to freely dispose of natural wealth and resources) of the African Charter on Human and Peoples' Rights.²³

The problem is that many national legal systems do not recognize customary or collective forms of land tenure, treating land without formal titles as state property. This creates a basis for its alienation to foreign or domestic investors, without taking into account the rights of local communities. This practice leads to the violation of both individual property rights (of individuals who actually use the land) and collective property rights (of the community as such). This duality therefore requires separate protection mechanisms: while individual rights can be protected by traditional civil law measures (actions for recognition of ownership, compensation), the protection of collective rights requires specific instruments such as collective property titles, delimitation and demarcation of community territories, and mechanisms for collective participation in decision-making.

2. International framework for the concept of the right of access to agricultural land

In response to the challenges posed by land grabbing in international law, initiatives have been developed to counteract the negative effects of this phenomenon. This framework does not constitute a coherent, codified legal system, but rather a set of interrelated instruments, principles, and standards developed mainly within the United Nations system and its specialized agencies, in particular the Food and Agriculture Organization of the United Nations (FAO).

²² Communication 276/2003, Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, African Commission on Human and Peoples' Rights, Decision of 25 November 2009. See S.J. Anaya, R.A. Williams, *The Protection of Indigenous Peoples' Rights over Lands and Natural Resources Under the Inter-American Human Rights System*, "Harvard Human Rights Journal" 2001, vol. 14, pp. 33–86; W. Wicomb, H. Smith, *Customary communities as 'peoples' and their customary tenure as 'culture': What we can do with the Endorois decision*, "African Human Rights Law Journal" 2011, vol. 11, no. 2, pp. 422–446.

²³ African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

2.1. FAO Voluntary Guidelines – the universal nature of the right to access land

The fundamental document for the concept of the right to access to agricultural land is the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security, adopted by the FAO Committee on World Food Security at its special session on 9–11 May 2012. Although not legally binding (*soft law*), these guidelines are the first comprehensive attempt to establish international standards for land governance from a human rights perspective.

The document refers to fundamental principles that civil society organizations consider extremely important. In particular, it concerns the observance and protection of human rights in the context of access to and rights over land. The guidelines clearly define the principles of implementation based on respect for human dignity, justice, equality, gender equality, and freedom from discrimination. It is a comprehensive and balanced approach to natural resource management. Particular emphasis has been placed on the principles of consultation and participation. These principles are an extremely useful tool, especially for representatives of indigenous peoples, who are often unable to invoke the principle of free, prior, and informed consent.²⁴

In the case of specific commitments, states should recognize and respect all land rights, both customary and other forms of land use. This principle also applies to persons who are not currently officially protected by statute. In addition, states are obliged to protect citizens from intimidation (forced evictions) and violence, and to ensure access to justice and the right to appeal (including protection against loss of property, restitution of property, compensation, damages) in cases of violation of recognized land use rights.

The fundamental premise of the VGGT is that responsible management of land, fisheries, and forest tenure is a key condition for the realization of the right to food and contributes to food security and sustainable economic, social, and environmental development (VGGT 1.1).

From the perspective of the right of access to agricultural land, the VGGT provisions on the protection of land rights are of particular importance. The guidelines oblige states to recognize and respect all landholders, regardless

²⁴ W.O. Larbi, *The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) and the Framework and Guidelines on Land Policy in Africa (F&G): Versatile tools for improving tenure governance*, <http://land.igad.int/index.php/documents-1/improving-land-governance/1527-vggt-f-g-versatile-tools-for-improving-tenure-governance/file> [accessed on 19.10.2025].

of the formal or customary basis of their tenure (point 5.3). States should ensure that policies, laws, and organizations related to tenure recognize a wide range of tenure rights and right holders, including customary and informal tenure rights (section 5.4). This provision is crucial for the protection of both individual and collective land rights – states must protect not only formal individual property titles, but also informal and customary rights, which are often collective in nature.

The Guidelines are intended to serve as a reference point and to improve the management of rights related to the use and occupation of land, fisheries, and forests in order to achieve the overarching goal of ensuring food security for all people and supporting the progressive realization of the right to food in the context of national food security. The Voluntary Guidelines aspire to be a document regulating land policy and land management. Land access management is treated here as a key element determining the conditions and ways in which communities or individuals can acquire rights and obligations arising from rights to land, fisheries, and forests.²⁵ The obligation to respect human rights and access to land also applies to non-State actors, including businesses. This means that States hosting international corporations on their territory have an obligation to ensure respect for all human rights and normatively recognized land rights.

The solution contained in point 12.15 of the VGGT reinforces this principle, emphasizing that in the case of foreign investments, States should ensure that the activities of foreign investors are consistent and compliant with the principles of protecting recognized rights, in the area of access to land, promoting food security, and other existing obligations arising from the constitution and law. It is particularly important in this context to take into account voluntary commitments under regional and international legal instruments.

2.2. UN Declaration on the Rights of Peasants

On 17 December 2018, the UN General Assembly adopted the Declaration on the Rights of Peasants and Other People Working in Rural Areas (Resolution 73/165).²⁶

²⁵ P. Seufert, *The FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests*, “Globalizations” 2013, vol. 10, no. 1, p. 185.

²⁶ For more information: P. Claeys, M. Edelman, *The United Nations Declaration on the rights of peasants and other people working in rural areas*, “The Journal of Peasant Studies”

The Declaration articulates clearly, both, the individual and collective dimensions of land rights. Article 5(1) of the DPC states that peasants and other people working in rural areas have the right to access and use the natural resources present in their communities, necessary to ensure adequate living conditions, in a sustainable manner. They also have the right to participate in the management of these resources.

Article 17 of the DPC, which comprehensively regulates land rights, is of fundamental importance. According to Article 17(1), peasants and other people working in rural areas have the right to land, individually and/or collectively, in accordance with Article 28 of this Declaration, including the right to access land, water reservoirs, coastal waters, fisheries, pastures, and forests, and to use and manage them in a sustainable manner to ensure an adequate standard of living, a place to live in security, peace, and dignity, and the right to participate in development. The phrase “individually and/or collectively” clearly emphasizes the dual nature of the right to land, encompassing both individual and collective dimensions.

Under Article 17(2) of the Declaration, States have an obligation to ensure that the right to land and natural resources is exercised without discrimination. Therefore, States should prohibit all forms of discrimination related to title, use, and management systems for land and natural resources. Under Article 17(3), States are obliged to take appropriate measures to ensure the legal recognition of land rights, including customary rights that are not currently protected by law, recognizing the existence of different models and systems. Furthermore, States shall recognize and protect natural commons and related systems of collective use and management.

States must also refrain from taking measures that would result in a regression in the enjoyment of the right to land and natural resources. The content of Article 17(3) of the DPC refers directly to the solutions set out in points 4.4, 5.3, and 8.3 of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security.

Peasants and other people working in rural areas who have been arbitrarily or unlawfully deprived of their land have the right, individually and/or collectively, in consultation with others or as a community, to return to their land that has been arbitrarily or unlawfully taken from them, including in cases of natural disasters and/or armed conflict, and to regain access to

the natural resources used for their activities and necessary for an adequate standard of living, where possible, or to receive compensation, or have their access restored to the natural resources used for their activities and necessary for an adequate standard of living, where possible, or to receive fair and lawful compensation when return is not possible (Article 17(5) of the DPC).

Article 17(6) of the CRC obliges states to take appropriate measures to carry out agricultural and other political reforms necessary to ensure *equitable access to land* for landless peasants and other persons working in rural areas.

The DPC is a soft law instrument and is not directly binding, but it should provide interpretative guidelines for existing human rights treaties and plays an important role in the development of international customary law. It also serves as a benchmark for assessing the policies and legal solutions of states in the field of protecting the rights of peasants, including during proceedings before the UN Human Rights Council.²⁷

2.3. RAI Principles: human rights as the foundation of responsible investment

In October 2014, during the 41st session of the FAO Committee on World Food Security, the Principles for Responsible Investment in Agriculture and Food Systems (RAI)²⁸ were approved. The RAI Principles were developed through an inclusive, multistakeholder and intergovernmental process that lasted from October 2012 to October 2014 and involved governments, the private sector, civil society, UN agencies, development banks, foundations, and academia. The RAI Principles aim to promote investments in agriculture that contribute to food security and nutrition, support sustainable and equitable development, and respect human rights.

RAI Principle 1 requires that investments contribute to food security and nutrition by enabling all people, at all times, to have physical, social, and economic access to sufficient, safe, and nutritious food that meets their dietary needs and food preferences, allowing them to lead active and healthy lives. RAI Principles 3 and 5 state that investments in agriculture and food systems should respect tenure rights by recognizing existing tenure rights (including

²⁷ C. Golay, M. Claeys, *The creation of new rights by the food sovereignty movement: the challenge of institutionalizing subversion*, "Sociology" 2012, vol. 46, no. 5, pp. 844–860.

²⁸ Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources, http://siteresources.worldbank.org/INTARD/214574-1nn38388661/22453321/Principles_Extended.pdf [accessed on 25.10.2025].

customary tenure rights) and their holders, in accordance with the VGGT. This principle explicitly covers both individual and collective land rights.

The RAI Principles emphasize that responsible investments should protect and not infringe on human rights, taking into account the obligations of States and the responsibility of businesses to respect human rights, in accordance with the 2011 UN Guiding Principles on Business and Human Rights.²⁹ Investors should ensure free, prior, and informed consent (FPIC) of affected communities before implementing investments that may affect their property rights, both individual and collective. RAI Principle 9 requires the inclusion of inclusive and transparent governance structures, processes, and grievance mechanisms, ensuring the participation of all stakeholders, including small producers, local communities, and indigenous peoples.

3. The concept of the right of access to land (land resources). Summary

Based on the *soft law* instruments presented, it seems reasonable to conclude that the concept of the right (proto-right?) of access to agricultural land (agricultural land resources) is in its initial stages of formation as a comprehensive right, consisting of both individual and collective dimensions.

The right of access to agricultural land can be defined as the right of individuals and local communities—in particular peasants, small farmers, and indigenous peoples to use agricultural land resources to meet their basic needs, especially the right to food, whereby this access may be exercised both individually and collectively, in various legal forms, including ownership, possession, lease, or other forms of land tenure.

It is crucial to distinguish between land ownership rights and land access rights. Ownership is the strongest form of control over a thing, characterized by exclusivity, absoluteness, and transferability – it is a classic individual subjective right. The right of access to agricultural land is a broader and more inclusive concept – it protects not only those who hold formal title deeds, but also individuals and communities who use the land on the basis of other titles, including customary ones. The right of access focuses on the functional dimension of the human-land relationship: it protects the possibility

²⁹ Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, March 21, 2011, UN Doc. A/HRC/17/31.

of using land to meet basic life needs, but does not require the exclusivity or transferability characteristic of property rights.³⁰

The special nature of the construct of the right of access to agricultural land lies in its dual character. It encompasses both an individual and a collective dimension, either of which has a different normative structure, different entitled entities, different protection mechanisms, and different legal consequences of violation. However, this dualism is not a contradiction, but reflects the complexity of the actual forms of land ownership and use in different cultural and legal contexts.

At the individual level, the right to access agricultural land protects the right of every individual to access land as a condition for the realization of individual human rights, in particular the right to food, an adequate standard of living, and property. This right belongs to each individual and can be enforced in court or other human rights bodies. Violation of this right gives rise to the responsibility of the State and, potentially, other entities (e.g., private investors) and can be remedied by measures such as restoration of access to land, compensation, or criminal or administrative sanctions.

Collectively, the right to access agricultural land protects the rights of communities as such – indigenous peoples, local communities, peasant groups – to maintain collective control over the land and natural resources they traditionally occupy or use. This right is group-based, which means that it belongs to the community as a collective entity, not to its individual members. Decisions regarding the use of land are made collectively, in accordance with the community's internal decision-making structures, which are often based on custom. Violation of this right gives rise to the state's responsibility towards the group as such, and remedial measures must take into account the collective nature of the right – compensation for individual members of the community is not sufficient, but it is necessary to restore or protect the community's collective control over the land. The collective dimension of the right of access is particularly evident in the context of the FPIC principle which requires the consent of the entire community, not just individual members.³¹

The right of access to agricultural land comprises several key components. The first component is the right to recognize and protect the existing,

³⁰ M. Wegerif, M. Coulibaly, H. Ouedraogo, *Land Tenure Governance in the First Decades of the 21st Century: Progress, Challenges, and Lessons from 18 Countries*, "Land" 2025, vol. 14, no. 4, 671.

³¹ C. Golay, I. Biglino, *Human Rights Responses to Land Grabbing: A Right to Food Perspective*, "Third World Quarterly" 2013, vol. 34, no. 9, pp. 1630–1650.

currently exercised land rights, regardless of their formal documentation. This component derives directly from paragraphs 5.3–5.4 of the VGGT and Article 17(4–5) of the DPC. It protects both individuals who use land on the basis of custom, tradition, or long-term *de facto* possession, and communities that use land under collective tenure systems. In the case of individual rights, this protection may take the form of granting individual titles of ownership or use, while in the case of collective rights, it requires the recognition of collective titles of ownership or use vested in the community as such.

The second component of the right to access is protection against arbitrary deprivation of access to land, as expressed in Articles 5(5) and 17(8) of the DPC. This element protects against forced expropriation and eviction, as well as speculative land grabbing. Any interference with existing access, whether individual or collective, must comply with international human rights standards, including the principles of legality, proportionality, necessity in a democratic society, and adequate compensation. In the case of collective rights, an additional requirement is to obtain the consent of the community (FPIC).

The right of access to agricultural land also includes the right to participate in decisions regarding the use of land and natural resources. At the individual level, this right is reflected in the general principles of administrative and judicial procedures which guarantee the individual the right to be heard and to participate in proceedings concerning their rights. At the collective level, this right is expressed primarily in the principle of free, prior, and informed consent (FPIC) of the community, which requires not only consultation with the community, but also the actual obtaining of its collective consent to projects affecting its land and resources. FPIC is a specific mechanism for protecting the collective dimension of the right of access, which has no direct equivalent in the context of individual rights.³²

The right of access also means the right to *equitable* access to land, which entails the obligation of States to pursue policies that enable access to land for landless persons or those with insufficient land resources. This element is reflected in Article 17(2) of the ICESCR, which states that States should take appropriate measures to carry out agricultural and other policy reforms necessary to ensure equitable access to land for landless peasants and other persons working in rural areas. At the individual level, this may include land distribution programs to individuals, while at the collective level, it may include the transfer of land to local communities for collective management.

³² M. Claeys, P. Delforge, *The Creation of New Rights by the Food Sovereignty Movement: The Challenge of Institutionalizing Subversion*, “Sociology” 2012, no. 46, pp. 849–851.

Once again, it is worth emphasizing that the concept of the right of access to agricultural land does not negate the importance of property rights. On the contrary, it recognizes ownership as one of the possible and important forms of realizing access to land. At the same time, however, this concept goes beyond the narrow, civil law understanding of property rights, placing itself in the perspective of human rights and recognizing that access to land is a prerequisite for the realization of a number of fundamental rights, including the right to food, an adequate standard of living, housing, and work. This point of view corresponds to the evolution of international human rights law, which increasingly takes into account the social and environmental context of the realization of property rights. The dual nature of the right of access that encompasses both individual and collective dimensions is what makes it unique and requires the use of a variety of legal instruments and protection mechanisms depending on whether we are dealing with a violation of individual or collective aspects of this right.³³

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³³ O. De Schutter, *International Human Rights Law*, Cambridge 2014, pp. 289–320.

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