



Deutsches Institut  
für Menschenrechte

## Implementation of UNDROP in Europe – example of Germany

Interim report – work in progress

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Menschenrechte

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human rights

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# Overview

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1. UNDROP – Declaration – Challenges for implementation
  - History of the declaration
  - Why Germany abstained in the decision
  - Why to implement this instrument in Germany nevertheless
2. Study by the GIHR with University of Halle
3. Implementation of UNDROP
  - in a multi-level-system
  - Challenges for implementation
4. Selected focus areas:
  - **Articles that might need less attention / criteria for selection (Focus today)**
  - **Access to land (Focus today)**
  - Access to seeds
  - Biodiversity
  - Other relevant areas that will be analysed
5. Resumee

# UNDROP-Declaration – Challenges for implementation

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## Background: Neglect of rural areas and rural development

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- 70 Percent of people living in extrem poverty and 80 percent of the hungry persons live in rural area
- Neglect of rural area in many countries as driving force
- e.g. Maputo Declaration of the African Union (2003): Spending 10 Percent of the Budget on Agriculture and Rural development: Today achieved in 9 from 54 countries → in January replaced by Kampala Declaration
- Weak institutions (land cadastre), sharing of agricultural research, available weather data, support in marketing of produce, maintaining storage systems, land banks
- Partially dismantled in the 70 and 80 part of World Bank / IMF advise
- Not working for marginalized groups (minorities, women, migrants etc.)

# 1. UNDROP-Declaration - Challenges

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## (1) History of the declaration

- Text developed by Famers, HR Working Group of La Via Campesina
- Is based on problem definitions developed by farmers – therefore a strong and authentic document
- Particularly based on experiences of injustice, which are not so available in agriculture of Germany (e.g. forced evictions)
- Example of UNDRIP (on Indigenous Peoples): Using the essential rights of the two core human rights Covenants
- Nevertheless many provision of UNDROP are applicable to a German Context and needs to be looked at in a country specific manner

# 1. Applicability in Germany

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## (2) Why Germany abstained?

- Problems with some of the formulations
  - On new rights
  - On specific formulations – access and use of the environment
  - Parts of the declaration seem not to be so relevant for Germany
- At the moment no political willingness to lead and combine to necessary discourses
  - Stabilising farm incomes, helping them in negotiation with much more powerful economic actors, upwards and downwards in the supply chain
  - Realizing the urgent need to address the climate impact (mitigation) of agriculture but particularly the adaptation needs of the next years and decade

### (3) **Why to implement the UNDROP in Germany nevertheless**

- Tradition and rule to implement or be guided by spirit and content of UN-GA Declarations by HRC Declarations even if one countries abstains
- But a positive – winning attitude is needed to get the necessary attention: A tool to focus on rights and need of those peoples which are target group of UNDROP
  - Small scall peasants / farmers
  - Pastoralists
  - Fisherfolk
  - Agricultural labourers
- Recent attempts to discuss and develop a new attention to such groups form rural areas have been ignored or too long not implemented
  - Zukunftskommission Landwirtschaft (Berlin) - Strategischer Dialog (Brüssel)
  - A much more structured dialogue is needed to think about how transition to a sustainable agriculture and rural development

# Study by the DIMR and Universität Halle

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## Study DIMR / GIHR and the University of Halle

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- Several civil society organisation and farmer orgs asked the DIMR to do a study on how to implement UNDROP (we give advise also on the implementation of other UN-Texts or Council of Europe Texts) e.g. CRC / CRPD
- Search for a law faculty to support us in the overview of relevant laws
- Prof. Dr. Dirk Hanschel (University of Halle) with four doctoral students
  - Legal analyses
  - Interview with staff in ministries and relevant public institutions and Civil society organisations

# Study DIMR / University of Halle

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## Task to check which UNDROP standards:

- (1) **represent existing law** (universal, regional (EU), national, subnational or local) and  
(a) correspond to German practice. (b) or show an implementation deficit.
- (2) **constitute international law already in force but are not applicable to Germany de ratione materiae**
- (3) **go beyond existing law and practice, but meaningfully complement the human rights acquis** and whose implementation would therefore be an expression of the human rights-friendly basic orientation of German policy and a contribution to the careful further development of the human rights acquis.
- (4) **go beyond law and practice, but cannot realistically be implemented**, not political will
- (5) **How best to implement these norms**
- (6) **Is it politically possible** – where are difficulties to find support / where are cleavages

# Implementation of UNDROP

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# Challenges for implementation

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## (1) Implementation in a multi-level system

- EU regulations
- Transposition in national law / federal laws
- Länder-competences
- Cities / local governance (Landkreise etc.)

## (2) Other challenges

- Institutions available
- Strategic planning – spacial planning / agriculture / sustainability needs - how to bring this together
- Conflict lines (cleavages)

# Possible conflicts of objectives during implementation

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## (1) Between different target groups

- **Lack of social debate on the benefits and advantages of small-scale farming structures / agroecology**
- Status of the report of the “**Zukunftskommission**” and the **Strategic Dialogue** at EU- Level: Which topics / assumptions can be regarded as “agreed”? Which questions remain unanswered? Need for political clarification, time window has not been used in the last legislative period.

## (2) Conflicting objectives between different support policies

- Conflicting objectives between social, economic and environmental sustainability
- **Policy area that was very strongly influenced by political decisions (CAP)**, i.e. the stakeholders were often unable to make independent decisions.
- There are **profiteers (vested interests)** of previous agricultural policy - question of how transitions can be organized and financed.

# Selected focus areas

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# Criteria / considerations for the selection of priority policy areas or for the non-addressing of certain articles

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- (1) **Relevant topics which, in our view, deserve special attention**, as they are conflict-ridden and may require a more human rights-based approach, in which UNDROP can provide important impetus:
- **Access to land as a productive resource.** Relevant topics in Germany.
    - Land market regulation,
    - Agricultural reform, i.e. better, fairer access to land
  - **seeds and reproduction fees** (Nachbaurecht – Nachbaugebühren)
  - **Biodiversity, natural resources, climate protection**

## Articles that need less attention: Criteria for selection

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- (2) **Differentiation in policy areas that are regulated in Germany quite adequately and do not need to be looked at for the POPWRA**
- Social security
  - right to an adequate standard of living (access to water, housing, right to be protected from hunger)
  - Right to health
  - Right to education
  - Protection from displacement
  - Freedom of expression
  - Safe and healthy working conditions (Art. 14),
  - fair wages and equal remuneration (Art. 16 (5),
  - no forced labor (Art. 13 (5))
  - Right to organize / establish peasant organizations (Art. 9)



## Selection of Articles – Lead questions

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- (3) Issues that can lead to considerable problems when implemented in Germany despite regulation in other policy areas:
- Conditions for seasonal workers and migrants
  - Forced labor as a supply chain issue
  - Child labor as a supply chain issue
  - Right to housing (for agricultural workers, seasonal workers, etc.)

## Lead questions:

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How are the rights enshrined in UNDROP currently enshrined in Germany / in the EU / in international law and how could they potentially be better implemented by German policy at home and abroad (international cooperation and extraterritorially),

- Which regulations violate or contradict UNDROP provisions or where are there gaps?
- Which institutions would be relevant for proper implementation, but are not yet sufficiently involved or entrusted with it?
- What specific political, legislative and other processes are pending at German and European level in which UNDROP provisions should be taken into account?

## Access to land – problem description:

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### **Basic problem today:**

in parts of Germany, the purchase price (and in some cases the rent) for agricultural land can no longer be financed through the agricultural cultivation of the land.

### **Consequence:**

Access to land, especially the purchase of agricultural land, has become much more difficult over the last 15 years.

### **But:**

- In some federal states, it is still possible for non-farmers and start-ups to gain access to land by renting it.
- In addition, prices could be much higher if it were not for the existing regulations, particularly the GrdstVG and state leasing laws (in particular: right of first refusal and lease restrictions)

**Problem recognized** by state legislators

**However: No promising legislative initiatives** by the states to date

# Change in access to agricultural land through:

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## 1. Lease

- greater land turnover than with purchase; statistics are missing, but it is assumed that 5 percent of agricultural land is leased annually → but often with the same tenants
- plays a more important role for farmers overall

## 2. inheritance: no data known

## 3. Purchase

- West Germany: less than 40,000 ha sold to non-family buyers per year (0.35 of the total agricultural area)
- East Germany: around 46,000 hectares sold (0.83 percent of the agricultural area)
- Nationwide: 60,000 to 90,000 ha sold per year; corresponds to approx. 0.5 percent of the transition

**Purchase prices** have risen continuously since 2007. Examples: ◦ In Lower Saxony and Bavaria, purchase prices have more than doubled within 10 years, ◦ more than quadrupled in Mecklenburg-Western Pomerania

**Lease prices have also risen, albeit less rapidly:** □ Example: ◦ In Mecklenburg-Western Pomerania, new lease prices doubled between 2007 and 2016 .

# Multicausal price development:

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1. **land as a finite commodity:** increasing scarcity of available land
  - example: settlement and traffic area in Germany increased by 56 ha per day (average of the years 2015 to 2018)
  - almost the area of an average farm (62 ha in 2020) is converted every day.
2. **production of renewable energies:**
  - competition with agricultural land use 1st example: Wind power and PV are part of the German climate protection strategy
  - consequence: up to six times higher yields compared to agricultural use
3. **growth of agricultural operations:**
  - constant or declining yields per hectare and technological and organizational progress towards greater cultivation
  - farmers compete for shrinking acreage
4. **investment in tangible assets:** Loss of value of fixed-interest financial products;  
new capital investments
5. **CAP: area-related agricultural support** from the European Union

# Overview: Interaction of federal and state law forms the legal framework

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| 1. <b>Grundstücksverkehrsgesetz – GrdstVG</b>      | 1. <b>Transfer Act – GrdstVG</b>                            |
| 2. <b>Reichsiedlungsgesetz (RSiedlG)</b>           | 2. <b>Reichsiedlungsgesetz (RSiedlG)</b>                    |
| 3. <b>Agrarstrukturgesetze der Länder</b>          | 3. <b>Agricultural Structure Acts of the federal states</b> |
| 4. <b>Erbrecht</b>                                 | 4. <b>Inheritance law</b>                                   |
| 5. <b>Landpachtverkehrsgesetz (LpachtV)</b>        | 5. <b>Land Lease Act (LpachtV)</b>                          |
| 6. <b>Flurbereinigungsgesetz (FlurbG)</b>          | 6. <b>Flurbereinigungsgesetz (FlurbG)</b>                   |
| 7. <b>Rechtsverordnungen der Landesregierungen</b> | 7. <b>Ordinances of the state governments</b>               |
| 8. <b>Grundgesetz</b>                              | 8. <b>Basic Law</b>   |

## Transfer Act:

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- **Land Transactions Act (GrdstVG) of 1961** “Act on measures to improve the agricultural structure and to safeguard agricultural and forestry operations”
- **Purpose of the law:** To avert threats to the agricultural structure.
  - Contains basic federal legal standards for regulating agricultural land transactions
  - Central: Approval requirement and pre-emption right (Vorkaufsrechte)
- **However, following the federalism reform of 2006**, this can no longer be changed by the federal government (see Art. 74 I No. 18 GG)
- **Therefore, there is a transfer of powers to the federal states**, which in principle have regulatory powers under Art. 30, 70 GG
  - Art. 125 GG: Continued validity of the old Land Transfer Act
  - Art. 125a I 2 GG: Law can be replaced by state law

## Constitutional court concretization regarding land as a commodity (BVerfG v. 12.01.1967 - 1 BvR 169/63, Rn 30):

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„Die Tatsache, daß der Grund und Boden unvermehrbar und unentbehrlich ist, verbietet es, seine Nutzung dem unübersehbaren Spiel der freien Kräfte und dem Belieben des Einzelnen vollständig zu überlassen; eine gerechte Rechts- und Gesellschaftsordnung zwingt vielmehr dazu, die Interessen der Allgemeinheit beim Boden in weit stärkerem Maße zur Geltung zu bringen als bei anderen Vermögensgütern. Der Grund und Boden ist weder volkswirtschaftlich noch in seiner sozialen Bedeutung mit anderen Vermögenswerten ohne weiteres gleichzustellen; er kann im Rechtsverkehr nicht wie eine mobile Ware behandelt werden.“

"The fact that the land is non-renewable and indispensable prohibits leaving its use entirely to the incalculable play of free forces and the whim of the individual; rather, a just legal and social order compels the interests of the general public to be asserted to a far greater extent in the case of land than in the case of other assets. Neither in economic terms nor in terms of its social significance can land be readily equated with other assets; it cannot be treated like a mobile commodity in legal transactions."



# Potential solutions (1) / The focus should be on state law

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## **(1) In the case of direct acquisition of land**

- Reservation of approval,
- purchase price restriction and beneficiary group of purchasers
- Pre-emption rights and structuring of state companies
- Double land acquisition tax on acquisition via land companies

## **(2) In the case of indirect acquisition of land**

- Dealing with share deals (in particular: approval regulations and pre-emption rights)
- Purchase refusals (Kaufversagen) by state authorities
- Upper limits on land for agricultural businesses
- Lease refusals (Pachtversagen)

## Potential solutions (2): Agricultural structural laws

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### → Agricultural structure laws could facilitate access to land (key instrument)

- In the new federal states, the draft laws have failed due to diverse resistance:
  - Resistance within the coalitions (e.g. Brandenburg: Green Ministry of Agriculture against SPD Ministry of Finance)
  - Resistance from interest groups:
    - Farmers' associations of the federal states (then also supported by CDU state associations)
    - Familienbetriebe Land und ForstGenossenschaftsverband (include LGP successor farms)
    - Grundbesitzerverband

## Resistances (based on interviews)

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Topic extremely complex and therefore only a marginal phenomenon in the state ministries Brandenburg:

- Opposition by associations is of a very fundamental nature and absolutely.
- There is no substantive, technical debate, but rather polemical rejection

Saxony:

- Here too, blanket rejection by associations and also by the state CDU
- Arguments against the draft Agricultural Structure Act must be answered:
  1. large agricultural enterprises (from approx. 2500 ha) see themselves as the most efficient structures that create lucrative jobs
  2. professionalization and concentration would only lead to improvements in the industry
  3. small farms do not meet the actual social challenges (precarious wages, high costs, infrequent vacations)

## Background questions asked to us

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- Far-reaching: Where is society in general and rural areas in particular heading?
- Should small-scale agriculture be strengthened?
- What positive effects do smaller agricultural structures have on rural areas?
- What possible disadvantages are associated with small or large farms?
- How can stakeholders and political decision-makers engage in a substantive and argumentative discourse on the future organization of access to land?

## Starting points for next steps

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Possible concrete starting points for our further work related to the instrument of agricultural structure laws

1. Lobbying in the states where there are already draft agricultural structure laws
  - Mediation between the positions and
  - Shaping public pressure, because there is often no agreement between the departments concerned (agriculture and finance), which are in different hands
2. Lobbying in the states where no agricultural structure laws are yet being considered
  - Creating awareness of the problem
3. Designing a draft so that access to land can be simplified

# Access to Seeds (Just work in progress / July)

## Overview about relevant regulations in multi-level-system

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1. UPOV-Übereinkommen
2. Internationaler Vertrag über pflanzengenetische Ressourcen für Ernährung und Landwirtschaft (ITPGRFA)
3. Übereinkommen über biologische Vielfalt (CBD) und Nagoya (Zusatz-)Protokoll
4. 12 EU-Richtlinien über Inverkehrbringen von Saatgut und Pflanzvermehrungsmaterial
5. Europäische Sortenschutzverordnung
6. Europäisches Patentübereinkommen
7. Europäische Biopatentrichtlinie
8. EU-VO zur Kennzeichnung gentechnisch veränderter Lebens- und Futtermittel und EU Freisetzungs-Richtlinie
9. Deutsches Patentgesetz (PatG)
10. Deutsches Sortenschutzgesetz (SortSchG)
11. Saatgutverkehrsgesetz (SaatG) und diverse Verordnungen (vgl. Folie 20)
12. Gesetz zur Regelung der Gentechnik (GenTG)

## (Translation – informal not checked)

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1. UPOV Convention
2. International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)
3. Convention on Biological Diversity (CBD) and Nagoya (Additional) Protocol
4. 12 EU directives on the marketing of seed and plant propagating material
5. European Plant Variety Protection Regulation
6. European Patent Convention
7. European Biopatent Directive
8. EU Regulation on the Labeling of Genetically Modified Food and Feed and EU Deliberate Release Directive Regulation on the Labeling of Genetically Modified Food and Feed and EU Release Directive
9. German Patent Act (PatG)
10. German Plant Variety Protection Act (SortSchG)
11. Seed Marketing Act (SaatG) and various ordinances
12. Act on the Regulation of Genetic Engineering (GenTG)

# Resume:

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# Resume

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- It will be an uphill struggle to get UNDROP to be seen a useful document for the German Government
  - Examples of usefulness needs to be found and documented
  - Many potential measure that will be described in the study are already heavily discussed and in political debates (e.g. Agrarstrukturgesetze)
  - At the same time huge potential to reopen discussions that need more attention.
- **Let us try to open policy spaces for the discussion**
  - **Be specific in proposals**
  - **Discourses with the relevant ministries and with political parties**
  - **Get practitioners interested**
  - **Exchange with all relevant stakeholders**



# Cleavages

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- Trade / Food Sovereignty
- Farm workers – status – salaries
- Agrarstrukturgesetze / Agriculture structural law
- Seeds – Nachbau
- Biodiversity – Reserved areas / intensity of use
- Transition to generative agriculture
- Agroecology