

Land consolidation and rural development in Kosovo

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Summary:

Kosovo has a complex situation of a polarized farm structure with a large number of small holdings, a pronounced fragmentation and incomplete records on ownership. A methodology on land consolidation has been devised based on voluntary participation. It is a multipurpose strategy that can combine a range of land reform tools as appropriate, notably, that actualization of the property registers and re-organization of land can be accomplished in the same process. The approach sets ambitious requirements to the management capacity on the side of the Ministry of Agriculture, Forestry and Rural Development. The immediate challenge is to raise financing.

1. Situation in Kosovo agrarian sector

Kosovo has a polarized agricultural sector with few large holdings and a large sector of small holdings. The structure of size distribution is illustrated by about 80% of the number of farms being less than 4 ha and fragmented. Only 0,6% of farms are more than 10 ha.¹ To this can be added that the process of subdivision at inheritance is ongoing. SOE² holdings are in the process of privatisation through the KTA³ and this process is not linked to land consolidation.

The overall policy for the transformation of the Kosovo agrarian sector is outlined in the Agricultural and Rural Development Plan 2007-13.⁴ Land consolidation will be an important instrument to implement the land related objectives. These include, firstly, the objective to “restructure the physical potential” in the agricultural sector; often phrased as a need to “increase farm size”. Secondly, objectives aiming to improve forest management may apply land consolidation as also the forests are heavily fragmented. Thirdly, the strategy of local community development may formulate village renewal projects that in varying degrees may also involve re-organisation of land.

The Law on Agricultural Land⁵ sets the legal framework for public influence upon the management of agricultural land. The law defines the role of land consolidation in its chapter

¹ ARDP 2007-13. Statistics on the current farm structure in table 1.20 at page 22. See www.mbpzhr-ks.org

² Socially Owned Enterprises

³ Kosovo Trust Agency, see www.kta-kosovo.org

⁴ See “Master plan” at www.mbpzhr-ks.org

⁵ UNMIK/REG/2006/37, 23rd June 2006. See www.mbpzhr-ks.org

IV. Land consolidation is outlined with a wide scope for improvement measures that shall apply also for forest areas.

An EAR project, Agricultural Land Utilization Project (ALUP) was formulated to support the Ministry of Agriculture, Forestry and Rural Development (MAFRD) to develop the operational basis to implement the objectives in the Law on Agricultural Land. The ALUP project has supported the MAFRD in drafting administrative regulations on land consolidation and also five other administrative instructions regulating use of agricultural land. The AIs were each supported by a so-called “explanatory note” to guide the practical implementation.

2. Pilot experience and main findings

In parallel to elaboration of legal framework pilot activities have been ongoing in two villages. The outcome of these has been the realisation of constraints to land consolidation – no exchanges of land have been achieved so far.

2.1. Two pilot villages

Shishman village: A somewhat compact village in a valley with farm land adjacent to the village settlement with average size of land parcel ca. 0,6 ha and average size of farm holding ca. 1,3 ha.⁶ The baseline survey predicted low “land mobility”, as there is no municipal land that could be flexible either being for sale or to be shifted to other location. Besides, the surface irrigation system needs improvement. There are about 33% absentee owners. During negotiation it emerged that five owner’s signalled willingness to sell their parcels of farm land. However, no owner proved willing or able to buy and real negotiations on selling and buying did not materialise. A number of options for exchange of whole parcels were tested; especially between owners in higher and lower parts Shishmane. By February 2007 it appears that no exchange will be agreed.

Videj village: This village is located in a rather flat landscape. It has a large area of flat and very fertile and fragmented farm land. A particular problem is a lack of access roads so that owners trespass over other owner’s parcels to reach their own field, which in turn creates tension. The village is a so-called mixed village with about half Albanian and half Serbian owners. There are a large percentage of absentee owners as especially many of the Serbian owners do not live in the village. A certain degree of freedom lies in the fact that previous ditches for surface irrigation – that are no more in use - can be relocated to roads reserve. A few parcels may be available through privatization / “liquidation”. The uncertainty concerning “status” directly influences the situation in the form that the Serbian owners are cautious and generally sceptical and can not consider the concrete aspects of LC when their overall situation remains uncertain.

The activity in both villages has been to make a *baseline survey* that establishes a picture of de-facto situation. An interview is made with each owner. The de-facto situation of ownership and fragmentation is illustrated on a map, which proves most useful as medium for dialogue with owners. A simple questionnaire is filled out in the course of the conversation. Farmers are interested. An overlay of the old cadastral map and the recent ortophoto from 2004 is most useful as mapping base for the interview and medium of dialogue.

⁶ See Baseline survey, ALUP Progress Report no. 2, annex 8.

2.2 General constraints

In addition to the detailed knowledge of the two pilot villages the overall situation of farm structure and land registration has been assessed. Two general constraints in land consolidation in Kosovo are evident.

The first: Absence of public land for re-distribution through land consolidation

The constraint in Kosovo with lack of reserve land is due to the fact that public farm land has been privatized. There may in some localities be some municipal land but this tends to be of marginal interest for farming. It remains to be seen if the new owners of privatized land are motivated for land consolidation.

The second: Absence of credit for land purchase

The target group for the ARDP 2007-13 objective of “increased farm size” is the group of small and semi subsistence farmers who have, almost by definition, no means for net purchase of land. The absence of credit for land purchase for this target group therefore becomes a barrier to the envisioned “re-structuring” - within and without land consolidation.

Pilot experience revealed three overall problems facing the transformation envisioned in the ARDP2007-13: *Fragmentation, Re-structuring, incomplete registration of ownership*. The main finding is that the *full potential of land consolidation is only realised when these three main problems are addressed in combination*. In combination with the other requirements to land consolidation this leads to the multipurpose concept outlined below.

3. Constraints and difficulties

A huge task for land consolidation in Kosovo is to establish the “before” situation, that is, the starting point of property rights from which owners can then subsequently enter into agreements of exchange of land. In short: de-facto owners need be established – unambiguously - as legal owners. Clarification of ownership will encounter a combination of the following uncertainties:

Incomplete registration

Property records in Kosovo have not been systematically maintained since the late 1980s. This is due to the turbulent history with war and ethnic conflicts and the way reform was previously implemented. In some instances records are missing either because they were taken away during the war or never prepared. In other cases there are some records, however, in various ways incomplete. As from about 1990 the institutionalised practices that make up the foundation for property such as reporting of changes, adherence to registered boundaries and to planning regulations, etc, seem to have disintegrated.

A process of establishing a systematic property registration has been in progress over recent years. The system of property identification and registration of property rights is now in place. Projects are ongoing to optimise performance of the property registers and to improve the data quality.⁷

Unfinished land consolidations

Large projects with irrigation and land consolidations were started in the mid-1980s and implemented in large areas of Kosovo’s most fertile plains of agricultural lands. However,

⁷ See website for Kosovo Cadastral Agency: www.ks-gov.net

towards 1990 the overall situation destabilized and these projects although implemented on the ground never formalized land ownership. Consequently, large areas of re-organized land have no records of ownership of the de-facto situation. Only cadastral maps is the before-situation in some cases as old as 1959. It varies between municipalities as to how much documentation of transfer does exist at the official and how much is kept by owners.

Restitution claims

The restitution claims have their cause in the 1999 armed conflict in Kosovo. They are filed at the KPA⁸ and concern cases where an owner or lawful user is not able to exercise property rights. Claims concerning rural land are still coming and are expected to amount to more than 15.000 for the whole of Kosovo by end of 2007. Any project area for land consolidation and other activity that affects property need therefore clarify whether there are such claims in the area, what their substance is and how the claim may possibly be handled.

Unresolved conflicts

In some areas where land consolidations were implemented in the 1980s there are still unresolved conflicts over land. One of the causes is that some owners rejected the land consolidation plan by, for example, refusing to receive land or leave land as planned. Nevertheless, the new plan was given legal effect. A situation results in which some owners have legally valid title to land that they can not access; their right are not enforceable. These cases remain unresolved.

Falsified documentation

The possibility of falsified documentation introduces a fundamental uncertainty. At registration of property transactions there is a need to document previous transactions – to trace the ownership to its root. Cases are reported where documents that parties have relied on in good faith are subsequently challenged as falsified.

Absentee ownership

All rural communities in Kosovo have a large number of absentee owners. Between 30 to 40 percent of owners may be residing in other towns or abroad. This is in part due to the combined effect of the inheritance tradition and the wide spread migration. This poses a practical problem for land consolidation that needs to consult and make agreements with each owner.

Ethnic tension

The ethnic tension in mixed communities complicates land consolidation because it frustrates a concerted community effort. The continued unsettled “status” maintains an uncertainty on the side of the Serbian owners that for many of them makes it difficult to focus on the practicalities of optimising the use of farm land. Furthermore, the “status-uncertainty” may explain that many of them are not permanently living in the village and therefore difficult to contact and consult.

4. Land consolidation: Principles and framework

The objectives and principles on land consolidation set out by the LoAL were followed up by the Administrative Instruction No. 35/2006 on land consolidation⁹. It outlines the principles

⁸ See www.kpaonline.org

⁹ See AI 35/2006 at www.mbpzhr-ks.org

for land consolidation, it defines the key actors and their tasks and it delivers thereby also the structure of the management framework. The approach can be summarised in the following five principles.

LC is Agreement based

This principle is reflected in the term “voluntary” land consolidation. The owner is free to join or to stay out. Even when a project is in progress an owner remains uncommitted until he accepts a certain option and signs a binding agreement. The principle of voluntary participation builds on a clear incentive namely that technical assistance and transaction costs are provided free and the exchanged land shall be fully registered in the name of the new owner. The strategy is to announce this incentive and let farmers and municipalities respond by coming forward with a stated interest.

The voluntary principle is also reflected in the handling of disputes such as restitution claims and – should they occur – boundary disputes. Attempts will be made to mediate a solution that the parties can accept whereby the dispute is resolved. If this fails any contested land parcel is excluded from the land consolidation and the parties will have to resolve their conflicts through the courts and at their own expense. Changes in property are thus not implemented “against” any third party interest.

LC is market based

Exchange of land happens as voluntary agreements on selling and buying. Price levels are found at which parties can agree both to sell and buy. The principle is that price levels reflect the owner’s perception of prices. The AIs outline a valuation technique that aims to reach agreement between the owners on their perception of prices. Such relative valuation only serves as a basis for the exchange of land in the land consolidation and will not be formalized later i.e. as a basis for taxation.

LC is iterative

There are various ways in which the over all task can be split into smaller tasks of manageable size that can then be implemented in a sequence. The focus area can be delimited pragmatically, for example, with main focus on the high productivity agricultural land and omitting more difficult areas with settlement. A land consolidation needs not necessarily make a full coverage of cadastral zones, which are technical geographical units in registration. Adjacent areas can then be addressed at a later stage. After analysis in the baseline survey (see below) and consultation the project area can be reconsidered and priorities adjusted.

In perspective of the general uncertainty about property rights a voluntary land consolidation can be seen as first stage that settles those uncertainties that can be settled through mediation and formalized as voluntary agreements. The remaining cases for further legal process are then identified, -“filtered”- a side for subsequent legal process.

LC builds on a public-private partnership

The management model for land consolidation builds on co-operation between the public and the private sector. The MAFRD is overall responsible for land consolidation but needs not necessarily perform the technical activities. These are outsourced to the private sector of licensed surveyors. The overall responsibility in the side of the Ministry therefore concerns management and the private sector performs the technical implementation.

Although the licensed surveyor has overall responsibility – practical tasks may well be delegated to surveyors who do not yet have a license and to agricultural advisors who are often good to negotiate land exchange with farmers. Together such teams can provide the broad and interdisciplinary profile that the complex task of land consolidation requires.

LC is a multipurpose instrument

The complex situation in Kosovo requires that land consolidation can accommodate a range of tools to address the combination of issues and uncertainties that come to the surface in each locality. Voluntary land consolidation thereby becomes a multipurpose strategy.

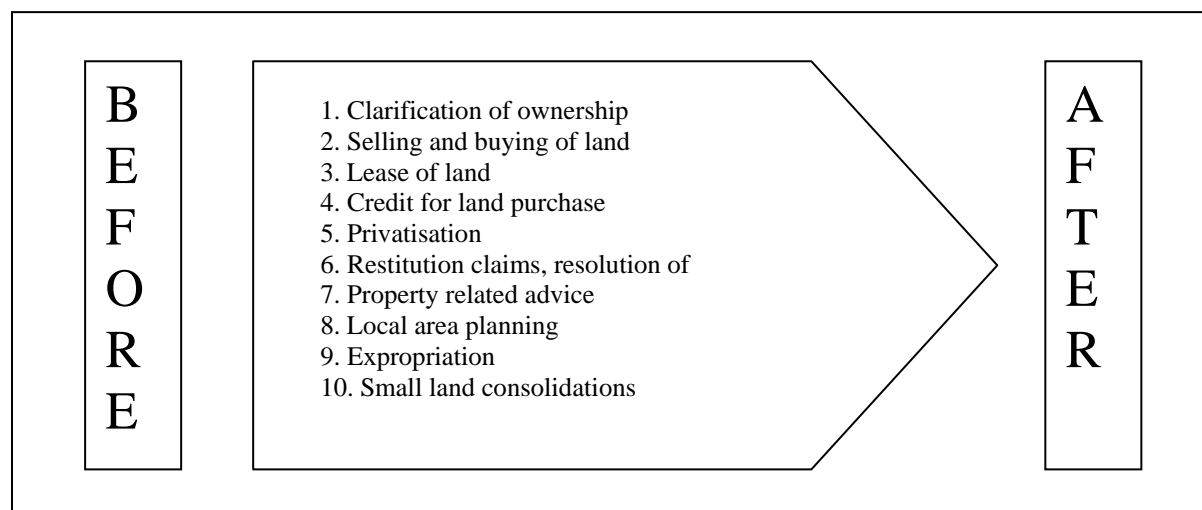


Illustration: The voluntary land consolidation as a multipurpose strategy with ten tools.

5. Organization

The AIs on land consolidation instruct the actors in the tasks and responsibilities in the land consolidation process. The scope of responsibility is wide ranging from the technical aspects of land registration, over negotiation and design of land consolidation plan to the handling of cash flows between owners and responsibility for government and donor funds.

The LoAL defines MAFRD as overall responsible for land consolidation. The AIs build on the management principle that MAFRD is overall responsible for the performance of land consolidation but not necessarily carrying out the technical operations. The AIs instruct that a new unit, referred to as a “Land Consolidation Office” (LCO) is established within the MAFRD.

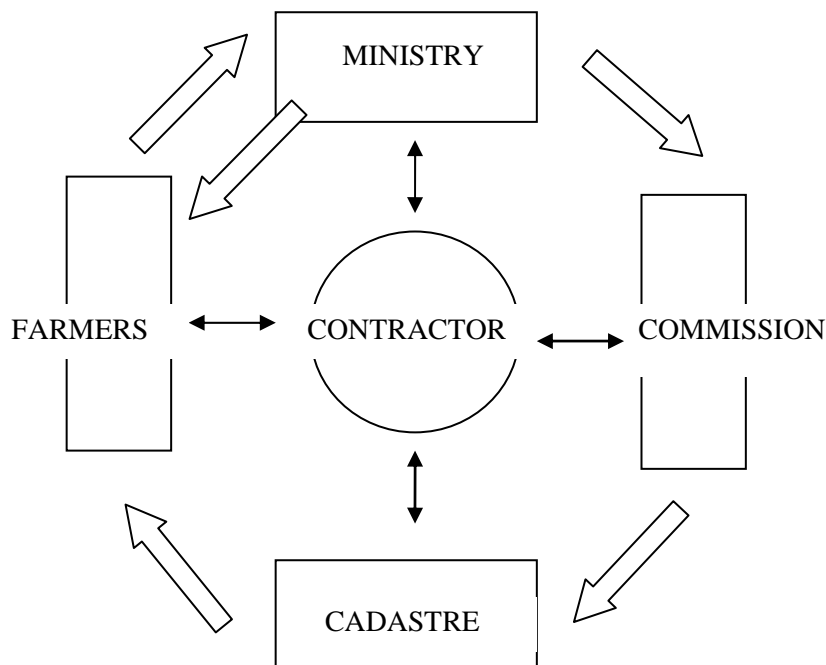
The management framework for land consolidation has five main institutional actors: The MAFRD/LCO, farmers and projects who take initiative and request land consolidation, surveyors who carry out the technical activities, the LC commissions that ensure legality of transactions and give them legal effect and the property registers MCO¹⁰ and IPRR¹¹ from

¹⁰ Municipal Cadastral Office

¹¹ Immovable Property Rights Register

which initial property information is extracted and to which the identification of the resulting new property situation is delivered.

The five key institutional actors are showing below:



The model for land consolidation: Illustration of the main institutional actors. The activity that triggers activity is the arrow that departs from the Ministry (anti-clockwise). This represents the essential pre-condition for land consolidation to happen, namely, that the Ministry has capacity and resources to offer support for implementation of land consolidation. Thereafter, the flow of the case is clockwise.

6. Strategy

A strategy is currently under discussion that builds on four blocks.

Block 1: Infrastructure for land consolidation

The block establishes the management in the Ministry and the land consolidation commissions. Main activities include awareness, support in project formulation, ensure performance of commissions, procure finance, outsource project implementation, quality control and auditing. To be established through a project on institution building that delivers the necessary expertise in legal, technical and financial management.

Block 2: Finance for land consolidation projects

To be negotiated from Kosovo Consolidated Budget and from international donor and lending agencies.

Block 3: Credit for land purchase

To be designed as a combination of reduced interest rates due to reduced risks in combination with an additional subsidy element.

Block 4: Land law

The large new body of land related legislation requires continuous teaching at academic and post graduate level for surveyors, planners, lawyers, agricultural advisors, applied research and cross border cooperation. To be implemented as part of block 1.

7. The immediate challenge: Financing

The critical assumption on which the voluntary land consolidation rests is the ability of the Ministry to offer free technical assistance and transaction costs as a strong incentive to which farmers can respond. This requires finance.

By May 2007 the MAFRD has no such financing and can, therefore, not act by starting information campaign and promise farmers ready assistance. The immediate task is to raise finance. Potential sources include The Kosovo Consolidated Budget, The World Bank and bi-lateral donors. IPA has no funding available.

Preparatory activities include:

- Establish inventory over unfinished land consolidations
- Identify priority areas
- Establish the first land consolidation commissions and initiate training
- Agree with the courts on the practical co-operation with the LC commissions
- Encourage land related projects on rural development to integrate land consolidation in design and financing.

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