

# **2008 Prague Regional Workshop on Land Tenure and Land Consolidation – Land Banks and Impact Assessment**

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# Land consolidation and land trust in Kosovo

## 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 farm being less than 4 ha and fragmented. Only 0.6% of farms are more than 10 ha.<sup>1</sup> To this can be added that the process of subdivision at inheritance is ongoing.

SOE<sup>2</sup> holdings are in the process of privatization through the KTA<sup>3</sup> 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.<sup>4</sup> 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-organization of land.

## Land Consolidation, the Kosovo strategy

On completing and subsequent promulgation of the Law on Agricultural Lands (LoAL) and its Administrative Instructions (AI) early 2007, a national strategy on the implementation of land consolidation has been drafted, discussed and finally approved (early 2008). This Strategy is based on the new law, on the needs of Kosovo and on the extraordinary complex situation of land ownership in Kosovo. The strategy was prepared in the framework of the EAR supported Agricultural Land Utilization Project (ALUP) 2006-2008, by MAFRD and ALUP jointly.

Over the last 20 years institutionalised practices of maintenance of property registers have disintegrated. About 80% of names of owners registered in the Cadastre and a similar part of the cadastral maps are totally outdated. This is due to a complex of factors in the recent history of Kosovo that led to a widely practiced routine of unrecorded transactions. Further aspects of uncertainty include restitutions claims, unresolved conflicts, falsified documentation, absentee ownership and ethnic tension.

Land consolidation in Kosovo is voluntary. No provisions for expropriation were made in the LoAL. In case of national interests, such as major infrastructural works, the tool of expropriation is delivered by relevant legislation other than the LoAL. The tool of land consolidation may be used to reduce the unfavourable effects for agriculture and to reduce the expenses of compensation.

Voluntary land consolidation in Kosovo builds on a set of principles that makes the process participatory and market based. Land consolidation is agreement based and exchange happens as voluntary agreements on selling and buying. The incentive for participation is that technical assistance and transaction costs are provided free and that the exchanged land shall be fully

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<sup>1</sup> ARDP 2007-13. Statistics on the current farm structure in table 1.20 at page 22. See [www.mbpzhr-ks.org](http://www.mbpzhr-ks.org)

<sup>2</sup> Socially Owned Enterprises

<sup>3</sup> Kosovo Trust Agency, see [www.kta-kosovo.org](http://www.kta-kosovo.org)

<sup>4</sup> See “Master plan” at [www.mbpzhr-ks.org](http://www.mbpzhr-ks.org)

registered in the name of the new owner, a major advantage given the difficult state of the Cadastre. Land consolidation can bring in a range of tools to address the varying combination of issues and uncertainties that surface in each locality.

The organisational model for land consolidation is based 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 management is scheduled to be outsourced and to be carried out by a Land Consolidation Office (LCO) established within the MAFRD, and comprising high level specialists on temporary contract basis. The management framework for land consolidation has five main institutional actors. These are (i) the *LCO*, (ii) the *farmers and projects* who take initiative and request land consolidation, (iii) the *surveyors or survey firms* who carry out the technical activities, (iv) the *Land Consolidation Commissions (LCO)*, that represent owners interests, have decision power on the land consolidation plan and ensure the legality of transactions and give them legal effect and the property registers, and finally (v) the Municipal Cadastral Office and the Immoveable Property Right Register from which initial property information is extracted and to which the identification of the resulting new property situation is delivered.

In addition, the formation of a Supervising Board is foreseen, comprising high level officials of the MAFRD, the Ministry of Economy and Finance, the Ministry of Public Works, and the Kosovo Cadastral Agency. This Board will monitor programme performance in terms of progress and quality and will audit the expenditure of funds.

In the course of a land consolidation four main activities are foreseen. In the first place *the base line survey*, establishing a picture of the situation of ownership, land use and preferences. It provides the basis for a more accurate delimitation of area and specification of content of land consolidation. A second main activity is the *clarification of ownership*, needed to establish de-facto owners as proper legal owners before they can enter into land consolidation agreements. Clarification of ownership can be started as one of the first activities and proceed in parallel to the baseline survey. Third is the *Negotiation and planning* process, being the stage in which concrete options are negotiated with owners, leading to binding agreements with those owners who decide to exchange lands. The last stage is the *Registration*, which formalises the agreements, performs cadastral surveys and registers the new situation of ownership in the property registers.

The time horizon for a voluntary land consolidation should be taken as about 1 year. This sets the realistic perspective for owners that they can use their new land in the next cropping season.

Although the character of each land consolidation is unique, In Kosovo several types of are likely to be encountered. *The voluntary land consolidation* is initiated by a group of farmers who realise a need for land consolidation and take initiative and make a request to the MAFRD. A particular problem pose the so-called *unfinished land consolidations*, which concern areas where land consolidation was fully or partly realised on the ground during the 1980ies without registering ownership in the property registers. Further, *Land related projects under the Kosovo Agriculture and Rural Development Plan* may in varying degrees involve re-organisation of land. *Public interventions* originate from the side of public agencies and involve issues such as infrastructural works may well require land consolidation to retain the potential of the agricultural land that is de-figured and to provide part of the compensation to the affected owners. Given the troubled recent past of Kosovo, also *Conflict resolution* is expected to appear in many land consolidations or may even be main reason of initiation.

Voluntary land consolidation requires specific knowledge requirements from each of the key actors. Strengthening of this knowledge is a current point of attention. The key requirement to

the LCO concerns management because it is responsible for the performance of the other key actors especially the Licensed Surveyor and the Land Consolidation Commissions. The Commissions need the capacity to apply the detailed instructions on handling change in ownership. This sets a task of ongoing supervision and support. The private sector surveyors and agricultural advisors will need to develop a broader professional profile to handle the interdisciplinary tasks in land consolidation. The progressively larger and more complex land related legislation requires an academic discipline in land law.

The above strategy is a.o. based on the experiences in two pilot projects. The first pilot (Shisman village in the Municipality of Gjakovë/Đakovica) was suspended after completion of the baseline survey for the time being since no exchanges could be realized, a.o. due to lack of credit facilities and uncertainty over the contribution by the GoK. The second pilot (Videja, Municipality of Klinë/Klina) is included as a voluntary land consolidation in the first larger scale land consolidation effort, planned for 2008/2009.

### Land consolidation, practices.

The Government of Kosovo has proclaimed land consolidation as a priority and has made available budget for land consolidation. This includes an amount of € 1.2 million for 2008 and 2.3 million for 2009 and 2010 each, still depending on the progress in 2008. In 2008/9 about 5000 ha of land consolidation is foreseen, mainly (but not exclusively) comprising the completion and registration of unfinished land consolidations in three Municipalities. Advantage is that there is little need to explain about the need to resolve the problems with these unfinished land consolidations, and it is anticipated that it will be possible to demonstrate the land consolidation tool as an effective tool to address a variety of land related problems. However, the most interesting but also most difficult part may well be the small voluntary land consolidation in Videja in Klinë/Klina Municipality

The MAFRD decided not to establish a Land Consolidation Office (LCO) for the time being, and has floated a tender for a survey firm to take up the implementation of the technical activities. The MAFRD Dept. of Rural Development itself will assume the role of manager of the land consolidation programme of 2008. In the mean time four Land Consolidation Commissions have been formed and these will be operational on short notice. The initiation of the Supervisory Board is currently under discussion.

Because the Dept. of Rural Development does not have the capacity to manage the land consolidation in all its technical details, the EAR supported Institutional Support to the MAFRD project (IS MAFRD) has consented to assist the programme with good Kosovar and some international expertise. However, the installation of a high quality semi-permanent and full time LCO is considered an essential element in a successful approach to land consolidation. As a result, the above solution can only be seen as second choice, and moreover not more than temporary, since the IS MAFRD is completed per early 2009.

### The Kosovo Land Trust

In the CEEC the principle of a land trust was introduced in the ninety nineties when large amounts of land became available from state owned farms and enterprises. In the transition period two types of land trusts emerged from privatisation: state land on sale and unclaimed restitution parcels. The land trust has proven to be the right vehicle for the government to keep more or less control over the distribution of agricultural land, physically (farm size) as well as legally (lease contracts). Problems such as land fragmentation can be tackled and the process of land consolidation can be stimulated.

The Kosovo Trust Agency (KTA), established in June 2002, has a mandate to privatise a total of 500 SOEs in accordance with Regulations 2002/12, 2002/13 and 2003/13. Out of the 500 SOEs, 28 are primary agriculture oriented; sometimes split up in smaller units, totalling 109 entities, a mixture of proper SOEs and Cooperatives. It is estimated that out of the 109 entities only 50 to 60 agricultural SOEs will be prepared for privatisation, because agricultural Cooperatives are not part of the KTA mandate. The total area of agricultural land owned by agricultural SOEs is 60.000 ha, being 34.000 ha arable land, 22.000 ha pasture and 4.000 ha forest. It is estimated that the Cooperatives possess 18.000 ha and the 50 to 60 agricultural entities approximately 42.000 ha. Until now from KTA are privatised about 25,000 ha of agriculture land.

Going through this list of selection criteria, it becomes clear that claims for restitution is one of the reasons for KTA to proceed very carefully with privatisation of agricultural land. And rightly so, because many agricultural SOEs and village Cooperatives were established in the period 1945-1954 when agricultural properties were confiscated from “capitalists, missing persons and other enemies of the State”. The OSCE Mission in Kosovo in its Paper on Residential Property Rights confirms, that “there is a need for legislation to address the confiscation and nationalisation of land in Kosovo that occurred after 1945”.

Most CEECs started land restitution procedures after 1990, giving properties and land back to the former owners. MAFRD has made it clear on several occasions that privatisation of agricultural land of those agricultural SOEs established in the period 1945-1954 must be stopped (enabling former owners to present their land restitution claims), avoiding the burden of financial compensation in a later stage. Furthermore MAFRD, having the mandate to protect agricultural land, cannot accept that agricultural land under discussion is mismanaged on the basis of (very) short interim land leases.

Already in 2002 MAFRD has proposed the establishment of a land trust to facilitate medium-term leasing and bring SOE land into proper utilisation. The objectives of the establishment of the KLT were two-fold:

- Proper management of agricultural land under dispute in line with the mandates of KTA and MAFRD.
- Introduction of commercially viable farms and modern farming techniques, which will have a positive effect on the productivity in the agricultural sector.
- The farms will be leased on the basis of medium-term lease contracts (5 and 10 year leases, renewable).
- And last but not least the Land Trust has a positive side-effect by creating free land in extreme land fragmentation areas, by selecting and transferring young, commercial family farmers from these areas. The land left behind becomes the land buffer needed in the land consolidation process.

Even it was prepared rationality and objectives for that propose, the establishment of land trust was not approved by KTA.

## References:

1. Administrative Instruction 35/2006 at [www.mbpzhr-ks.org](http://www.mbpzhr-ks.org)
2. ARDP 2007-13. Statistics on the current farm structure in table 1.20 at page 22. See [www.mbpzhr-ks.org](http://www.mbpzhr-ks.org)
3. Haldrup, N.: Land Consolidation in Perspective of ARDP 2007-13, ALUP Technical Paper.