



Land Governance in an Interconnected World

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
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LAND CONSOLIDATION KOSOVO – CONSTRAINTS AND DIFFICULTIES

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Abstract

The Republic of Kosovo is a small country in the Southeastern Europe, with an entire territory of 10.908 km². As such, it faces a complex situation pertaining to the land administration and ownership matters in general. Aside from a solid legal framework, land fragmentation proves to be the major obstacle when it comes to the land use versus spatial planning policies in place. Subsequently, there is 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. To this can be added that the process of subdivision at inheritance is ongoing. The Government of Kosovo has continuously promoted various Land Consolidation Strategies aiming at improving land management throughout “restructuring” the physical potential in the agricultural sector respectively increasing the existing farm sizes.

Key Words: Agriculture, Cadaster, Land Consolidation, Property Rights, Strategy.



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INTRODUCTION

The Republic of Kosovo was historically faced with many problems in the area of land and property rights, starting with the special measures taken by the former socialist system, the problems caused by the last war of 1998-1999 and many other factors that are also related to the international presence in Kosovo after 1999.

Legislation that regulated this area, enacted before 1989, was based on self-governing socialism and of course all social relations were regulated by legal norms relying on the spirit and principles of this system.

Kosovo, as part of this legal system, was faced with significant problems that also followed after the war in Kosovo, as a result of the lack of legislation and institutional policies to improve this situation.

The area of civil law undoubtedly presents the most essential area where urgent reforms in the legislation are needed.

In particular, the practical aspect of the realization of property rights in Kosovo is considered difficult and the legal system here has a particular importance in realization of property rights of citizens.

Land and Property owned by the Republic of Kosovo is regulated by the Constitution and other legal acts and regulations, such as the “Law on Agricultural Land”, “Law on Forestry”, “Law on Kosovo Waters”, “Law on Roads”, “Law for Granting the Use and Exchange of Real Property of the Municipality”, “Law on Mines and Minerals”, “Law on Public Enterprises”, “Law on Cadaster”, and “Law on Expropriation of Real Estate”.

The international standards on property rights were directly applied, initially through UNMIK Regulations and later through its Constitution after Kosovo became an independent country. The legislation in Kosovo has incorporated fundamental rights such as the right to peaceful enjoyment of possession (*Article 1, Protocol 1 of ECHR*), the right to respect private and family life (*Article 8, ECHR*) and the right to an adequate accommodation (*Article 11.1, International Convention on Economic, Social and Cultural Rights*).

These standards establish positive obligations for all public authorities to enforce the right to an adequate accommodation and property for persons having inadequate living conditions and to guarantee safety of



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reside on the property. In this regard, public authorities are obliged to undertake immediate steps to provide security of residence on the property. Furthermore, international standards establish obligations for public authorities to prevent practices that may lead to a violation of human rights, such as ‘forced’ and ‘illegal evictions’.

The European Court on Human Rights has repeatedly held that Article 1 of Protocol No. 1 also establishes some positive obligations. Thus, in the case of *Öneriyıldız v. Turkey* ([GC], no.48939/99, § 134, ECHR 2004-XII), the Court held that the genuine, effective exercise of the right protected by Article 1 of Protocol No. 1 does not depend merely on the State’s duty not to interfere, but might require positive measures of protection, particularly where there is a direct link between the measures one might legitimately expect from the authorities and his effective enjoyment of his possessions. Even in horizontal relations there might be public interest considerations involved, which may impose some obligations on the State. In *Broniowski v. Poland* ([GC], no.31443/96, § 143, ECHR 2004-V), for instance, the Court held that positive obligations under Article 1 of Protocol No. 1 might require the State to take the measures necessary to protect property rights.

In 2008, the ECtHR further emphasized the positive obligation of public authorities to ensure protection of property rights. In the case of *Blumberga v. Latvia* (no. 70930/01, § 67, 14 October 2008) the Court held: “When an interference with the right to peaceful enjoyment of possessions is perpetrated by a private individual, a positive obligation arises for the State to ensure in its domestic legal system that property rights are sufficiently protected by law and that adequate remedies are provided whereby the victim of an interference can seek to vindicate his rights, including, where appropriate, by claiming damages in respect of any loss sustained”. It follows that the measures that the State can be required to take in such a context can be preventive or remedial.

CHALLENGES IN LAND REGULATION

One major obstacle impeding agricultural land regulation in the field, remains the so called ‘old land consolidation’. This is has started back in 1983-1986, and due to the social and political developments in place, it remains unfinished as of to date.



Based on the legal framework in force that time, land consolidation process would commence with the consent of 51 % of the owners in respective cadastral area.

The existing “Law on Land Regulation” which covers the land consolidation aspect as well, follows the principle of voluntary land consolidation which generally means a shift from enforcing land consolidation to making land consolidation process more attractive to the farmers. Furthermore, the interested farmers and owners in the area are offered free transaction costs and free assistance by a professional in the field of geodesic and cadaster.

The voluntary approach to land consolidation has certain basic legal characteristic such as:

- *Owners have the right to enter into transactions of exchange, but also the right to refrain from the process;*
- *An owner is only committed to the process when signing an agreement that specifies land exchanges. Owners are, therefore, not committed at the outset of the project and they are still free to consider options during the negotiation stage.*
- *As owners only join the land consolidation on such voluntary basis there will be no appeal cases.*
- *The procedure does not contain a requirement that value before and the value after. Differences in value can be evened out in cash payments.*
- *The transactions are implemented according to the same procedure as for any other property transaction of selling and buying land.*

PILOT EXPERIENCE AND RESPECTIVE FINDINGS

In terms of evaluating the voluntary approach of land consolidation, subsequent piloting activities have been ongoing in two villages of the country. There were identified two general constraints in this regard:

1. *Absence of public land for re-distribution through land consolidation;*



2. *Absence of credit for land purchase.*

CONSTRAINTS AND DIFFICULTIES OF THE LAND CONSOLIDATION PROCESS

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 institutionalized 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 optimize performance of the property registers and to improve the data quality.

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, 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 cannot access; their rights 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.



1. “LAND IS LIFE”¹

The right to peaceful enjoyment of land and property is fundamental human rights standard. Effective exercise of such a right is an important precondition for the sustainable functioning of the entire society.

The Government of the Republic of Kosovo and other relevant institutions are aware of problems faced by the citizens in relation to land property rights, including gender equality, and are committed to do everything in their power to ensure the protection of such rights.

International donors installed in Kosovo are as well actively involved in developing support strategies and policies towards advancing property rights sector in general.

The solution to the land and property rights challenges requires a constructive and proactive approach of all involved parties.

Post 1999 environment in Kosovo presented numerous housing and property rights challenges. In this environment, the property sector became a source of tension as illegal acts continued unabated, which in turn led to a highly charged social environment. Property rights and the practices surrounding court proceeding, registration and use of property were often in violation of required standards.

The European Commission Progress Reports for Kosovo, constantly highlighted weaknesses in the enforcement of land and property laws as one of the major obstacles for the protection and implementation of property rights.

The laws adopted by the Kosovo Assembly after the independence of Kosovo govern the legal system. In recent years, relevant Ministries and NGOs developed several documents, action plans and strategies for the protection of human rights including land and property rights.

Kosovo institutions and international administrative and judicial bodies acting in Kosovo are authorized and competent to protect property rights. The role of international organizations in the property rights enforcement is perceived to have a positive impact on the implementation of international human rights standards.

¹ Wittfogel, 1957



Despite considerable progress made by Kosovo institutions in the protection of property rights, a lot remains to be done. In order to ensure effective protection of property rights, it remains a necessity to further build administrative capacities of relevant institutions on the implementation and enforcement of such property rights.

In this context, a comprehensive review and thorough analysis of the legislative framework, national policies, and practical difficulties in the effective exercise of property rights, including gender and communities has been addressed by the Ministry of Justice (MoJ), jointly with the USAID Property Rights Programme in Kosovo.

2. NATIONAL STRATEGY ON PROPERTY RIGHTS

The Kosovo Government has adopted a National Strategy addressing property rights challenges in Kosovo in January 2017. Main objectives of the strategy are as follows:

- Securing Rights to Land and Property by Strengthening the existing Legal Framework;
- Securing Rights to Property by Addressing Informality;
- Enforcing and Guaranteeing the Property Rights of Displaced Persons and Non-Majority Communities;
- Enforcing and Guaranteeing the Property Rights of Women, and
- Using Secure Rights to Property to Fuel Economic Growth.

The Strategy outlines that a proper legal basis of land regulation respectively land consolidation, would have given a broad mandate to update the ownership and property information. The ownership update can be handled as transactions that are based on agreements and when the real owner is the legal owner, he may enter into agreement to regulate some of his parcels. Land Consolidation would provide updated text and map property information. In this way, land consolidation would have helped the cadaster agency in updating the ownership records.

Further, this Strategy reflects all agricultural land administration and regulation related laws that needs to be amended. As a result, the existing Law on Land Regulation has started amending in 2018, having the



GIZ - Strengthening Spatial Planning and Land Management in Kosovo (SSPLM) as part of the respective working group.

As follow up on the recommendations of the National Strategy on Property Rights in Kosovo, the Ministry of Agriculture Forestry and Rural (MAFRD) will this year start drafting a new law on Land Consolidation, where GIZ SSPLM will as well be supporting the entire process.

No property has been registered in the cadastral documentation after land consolidation. The property is being used as per the land consolidation documentation, the ownership remains as it was before land consolidation. In some Cadastral Zones property is being used as per the previous situation, Illegal constructions, Legal ownership issues still remain unsolved and there are often disputes on these properties, Lack of documentation for properties under land consolidation, Privatization of land under land consolidation.

3. LAND CONSOLIDATION STRATEGY (2010-2020), MINISTRY OF AGRICULTURE, FORESTRY AND RURAL DEVELOPMENT

Kosovo is currently in the process of restructuring the agricultural sector with the aim of achieving sustainable farm development. Consolidation of land is seen as an important component of land reform in place.

Land Consolidation Strategy presents a very important guidance and a basic document of policies and action plans of the Ministry of Agriculture, Forestry, Rural Development, for sustainable development of agriculture sector and proper land management. Land Consolidation Strategy aims at regulating land for more rational use and increased farm competition, legal property regulation, land use planning, environmental protection, alternative on-farm activities, farm income increase and improvement of the lives of population living in rural areas.

The general policy of transforming the agricultural sector of the Republic of Kosovo is included in the Agriculture and Rural Development Plan 2007-13² and its 2009-2013 update. Consolidation of land will be an important instrument in the implementation of objectives related to land:

² See "ARDP-2007-2013" at www.mbpzhr-ks.org



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- Restructuring physical potential in the agricultural sector, often expressed as the need "to increase farm size";
- Improving forest management, because they are highly fragmented;
- Developing local community, including regeneration of villages that to various degrees may include reorganization of the land.

General objective of the Strategy on Land Consolidation is to establish assumptions and forecasts that successful measures of implementation of land consolidation projects, are to ensure rational use of agricultural land, settlement of the ownership issue and security of land ownership, increase of farm size and competitiveness in the market, development of infrastructure for the resident population in those places, environmental protection, cultural heritage and help to develop alternative agricultural activities.

Specific Objectives of Land Consolidation Strategy are: to ensure land consolidation interaction within the concept of rural development, facilitate the process of land consolidation, ensure inter-relations of the land consolidation within rural and regional development in the future for successful developments, improve the preparation of land consolidation projects and funding for implementation of land consolidation projects.

However, the Land Consolidation Strategy 2010-2020, as of to date, has not started implementing by any of the institution mandated of doing so. Based on the statements of the central and municipal level officials in charge of performing land consolidation processes, the main reason why the Strategy is not feasible and implementable is the reflection of the "voluntary approach based consolidation", as it reflected in the Strategy.

Furthermore, not a single voluntary land consolidation project has been finalized, even though there were initiated in some municipalities³.

³ Municipality of Vitia, a project of voluntary land consolidation in 30 ha of agricultural land



4. LAND AND PROPERTY RIGHTS

CLARIFICATION OF OWNERSHIP AS A CHALLENGE TO LAND CONSOLIDATION

Government, ministries, municipal authorities, and independent agencies often have overlapping jurisdictions, and the court system is backlogged with land and property-related cases.

Many cadastral records were destroyed, lost, or moved out of the country in 1999, though the registry is being rebuilt. Issues with records limit the development of the formal property market needed for more stable economic growth. Concerns about restitution of property and the privatization of SOEs⁴ have not yet been fully resolved, and issues related to the rights of minority communities sometimes lead to inter-ethnic tensions.

Resolution of residential, agricultural, and commercial property claims remains a serious and contentious issue in Kosovo. Most property records were destroyed or removed to Serbia by the Serbian government during the 1998-1999 conflict, making determination of rightful ownership for the majority of properties complex. Cases of multiple ownership claims on a single property, with each claimant presenting a variety of ownership documents as proof are common.

The EU-facilitated Kosovo-Serbia dialogue process is helping address the cadastral records taken from Kosovo. The Kosovo Property Comparison and Verification Agency (KPCVA), formerly the Kosovo Property Agency (KPA has received 42,749 total claims, the vast majority of which relate to agricultural property), formerly the Housing and Property Directorate (HPD), has the authority to receive, register, and resolve property claims on private immovable property, including agricultural and commercial property. Decisions taken by the Kosovo Property Claims Commission within the KPCVA are subject to a right of appeal to the Supreme Court.

The KPCVA is also mandated to deal with a limited number of activities that formerly belonged to the UNMIK-era HPD and to implement the decision of the Housing and Property Claims Commission (HPCC) pending enforcement. In June 2016, the National Assembly passed legislation to expand the agency's mandate, allowing it to implement the EU dialogue agreement on cadastral records. The

⁴ *Socially owned enterprises, ex Yugoslavian shared ownership concept*



legislation came into effect in December 2016, following a challenge to the new law in the Constitutional Court.

In an attempt to better identify owners of agricultural lands, the government conducted an agricultural census in November 2014, over 50 years after the last such census took place. The Kosovo-Serb municipalities in the north and, to a lesser degree, in the south did not participate. The results show 413,635 hectares of agricultural land in use, of which 405,429 are in use by agricultural households and individual businesses and the rest by legal persons. The government is currently negotiating with the northern municipalities to incorporate their data into the national census.

5. CONSTRUCTION ON AGRICULTURAL LAND

Promoting growth in the agriculture sector is a key component in the Government of Kosovo's program for fueling Kosovo's economic development. Excessive fragmentation of land parcels and unpermitted construction over the past 15 years has significantly reduced the amount of arable land available for investment in Kosovo's agricultural sector, reducing agricultural productivity and potential for economic growth.

The Law for Treatment of Constructions without Permit was passed to regulate the process of legalizing unpermitted constructions. It was intended to formalize rights in the building so they may be registered in the cadaster and transacted in the land market or used as collateral to secure finance for investment. It was also intended to ensure unpermitted constructions are no longer the norm in Kosovo. The law in its current form provides only the opportunity to formalize rights to occupy the unpermitted construction. It does not provide a mechanism to formalize rights in both the building and the land as a single property unit that can then be registered in Kosovo's cadaster and transacted in the land market.

The law also contains rigid criteria for excluding from the amnesty scheme, without exception, unpermitted constructions based on the type of land. All unpermitted constructions built on Public Property are excluded. The bulk of unpermitted construction exists in city and town centers designated as "urban land for construction" under the former regime. This category of land has been transformed into Public Property. Unless the law is amended to address this issue, most unpermitted constructions in city



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and town centers will have to be demolished, contradicting the policy objective the law was intended to achieve.

The law did not provide for sufficient notification to all Kosovars, particularly those in the diaspora and DPs, to enable them to comply with the laws deadlines. Strict enforcement of the deadlines would result in demolition of their properties and violation of their human rights. The law also requires payment of fees that exceed the economic means of many Kosovars, creating an administrative barrier to formalization of their rights.

In 2013, the GoK passed a new Law on Spatial Planning to address past deficiencies in the planning process that led to proliferation of unpermitted constructions and land fragmentation. As the law is implemented, mechanisms to monitor implementation of the plans, coupled with stronger penalties for unpermitted construction will help prevent unregulated urban sprawl and encroachment onto arable land best suited for agricultural production. The GoK can also begin to move from a process focused solely on regulating spatial planning to a process that includes the development and management of land. This will provide incentives to encourage land consolidation projects in both rural and urban areas. In the course of developing and implementing spatial plans, the GoK must comply with Kosovo's Constitution and legislation, and the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) standards.

The Privatization Agency of Kosovo (PAK) is mandated to privatize "socially owned" land mainly consolidated to increase investment in arable land to increase agricultural productivity. Thus far, 22,000 hectares of socially-owned arable land have been sold and 17,000 hectares of arable land have yet to be privatized. Privatization has not produced the expected level of investment and agricultural productivity because spatial plans in place have not been effectively enforced, encouraging investors to either build unpermitted constructions on arable land or to simply hold on to the land for speculative purposes. A litigious environment surrounding the privatization process further inhibits productive use of arable land as investors have been forced to devote time and money to defend against groundless lawsuits.



6. UNFINISHED LAND CONSOLIDATION

In order to raise the production capacities in agricultural lands, that directly were related to the irrigation system which also was a system increasing, back in 1979 initial preparations for land consolidation in Kosovo had started.

The implementation of such land consolidation started in 1983-1989. During this period, 100 cadastral zones were involved in the territory of 8 municipalities of Kosovo. In 1989 the project was aborted without a definite finalization. Since year 2000, new circumstances for local economical development enabled a special treatment to agricultural development. Important factors to agricultural development were treatment and analysis of the unfinished land consolidation during years 1983/89. The research of unfinished land consolidation condition was done through ALUP project (Agriculture Land Utilization Project EU founded project), during 2006-2008.

None of the consolidated properties were registered in cadastral documentation, the land is being used according to consolidation maps and records, meanwhile the ownership remains with the old documentation as is evidenced before land consolidation; property exploitation is back again in the old state which means land consolidation is ruined. Property exploitation and its documentation are partially with in accordance with the performed land consolidation and partially with the state as it existed before land consolidation.

Ministry of Agriculture, Forestry and Rural Development in Kosovo is still working on the issue, jointly with the Kosovo Cadastral Agency, in order to find a appropriate solution to the problems farmers are facing, due to the old, unfinished land consolidation.

7. GIZ – PROJECT ON STRENGTHENING SPATIAL PLANNING AND LAND MANAGEMENT IN KOSOVO

The German Ministry of Economic Cooperation and Development (BMZ) has funded the project on “Strengthening Spatial Planning and Land Management in Kosovo, 2017-2019”. The two main project partner ministries are the Ministry of Environment and Spatial Planning and the Ministry of Agriculture, Forestry and Rural Development.



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As regards the project objectives, they will be focused on assisting the respective partner ministries on drafting the municipal zoning maps and preparing the necessary legal background for land consolidation in Kosovo.

In close cooperation with the partner ministries and all other stakeholders involved in land and property sector, the GIZ - SSPLM project is aiming at developing a so called “mixed land consolidation principle”. This principle would further involve both compulsory and voluntary approach of land consolidation. Furthermore, prior to the partner ministries have established the pertinent working group on drafting the new law on land consolidation, the SSPLM project jointly with its partners will study various models of successful land consolidation processed in the region.

Currently, there is an interest of the partner ministries to analyze the German land consolidation models and concepts. As such, the SSPLM project would continuously provide its knowledge at all stages of the respective legal drafting process.



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