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Studies on selected topics in land management and land administration

Land Consolidation: Legal Framework

Note by the Bureau of the Working Party on Land Administration

Summary

This note presents the results of the land consolidation study on the setup of a legal framework for drafting land consolidation law. It draws upon the results and recommendations of a research project carried out by FAO and supported by LANDNET and the Working Party on Land Administration. Based on several case studies from ten European countries, best practices were analyzed and twenty-seven key recommendations for a legal framework were formulated. These recommendations cover many aspects of land consolidation such as: key features, objectives, institutional, and financial, but also focus on topics for the implementation of land consolidation like, reallocation planning, valuation of property, cadastral surveying and land banking.

This document is a summary of results of the study. It focuses on the four key recommendations of the study that define conditions needed for land consolidation projects but not explicitly on the other twenty-three recommendations which focus on the implementation of such projects. Based on the study, a guide on legal framework for land consolidation is currently being developed.

The Working Party is invited to take note of the status of this study and request its Bureau to finalize the guide and present it to the Eightieth session of the Committee on Housing and Land Management October 2019.



I. Introduction

A. General

1. Land consolidation is one of the most efficient land management tools, allowing to improve the structure of agricultural holdings in a country, increasing national economic and social efficiency and bringing benefits both to private right holders as well as to society in general. Land consolidation is a complex instrument, which necessitates a thoroughly elaborated legal regulation, integrated into the national legal framework.
2. The recommendations included in this document are a summary of a study on legal framework and specifically focus on land consolidation on agricultural land. The recommendations provide more detailed guidance on the implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)¹ as well as building on good practices in Europe. While some countries have a long tradition in land consolidation, this land management instrument is comparatively new for other countries like Lithuania and the former Yugoslav Republic of Macedonia.

B. Objectives of the legal frameworks study

3. The primary objective of the joint study presented in this note is to facilitate the creation and/or further development of legal frameworks for land consolidation in Europe and Central Asia, through the promotion of good European land consolidation regulatory practices. The document also aims to facilitate the implementation of VGGT in the field of land consolidation by means of offering more detailed and practical recommendations.
4. The guide promotes the exchange of good practices between different countries with elaborated land consolidation legal frameworks. It is targeted to countries which have not yet developed a specific legal framework for land consolidation as well as to countries where the land consolidation instrument has yet a short history or is in the initial phase of its development.
5. The guide is not intended to provide universal legislative solutions. It aims to present the key aspects of land consolidation and respective legal solutions adopted by different countries as well as providing recommendations which should be adapted to local conditions and specifics of national legal frameworks.
6. The guide covers the main aspects of land consolidation and is structured to follow as close as possible the key phases of a typical land consolidation project. Besides the core land consolidation aspects, the guide also covers topics which are closely related to land consolidation. Such aspects are considered in the light of their linkage with the land consolidation, as, for example, is the case with land banking, expropriation, taxation, etc.

III. Findings of the study

7. Analysis of countries² demonstrated that there is no common form of land consolidation law. Some of the countries (for example, Germany and Denmark) have

¹ Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security. <http://www.fao.org/cfs/home/activities/vggt/en/>

² Denmark, Finland, Germany, Lithuania, the Netherlands, Serbia, Spain, Turkey

adopted legislation specifically dedicated to land consolidation. In other countries, provisions governing land consolidation are integrated into laws with broader application (such as Law on Land in Lithuania, Real Estate Formation Act in Finland). It might also be the case that several laws are dealing with land consolidation in different types of projects (for example, Real Estate Formation Act and Highways Act in Finland or Law on Agricultural Reform and Implementation Instructions for Land Arrangements in Irrigation Land and the Law on Soil Conservation and Land Use in Turkey). Also, land consolidation regulations may be provided for national level legal acts or at the level of legal acts of subjects regarding the state (as it is in Germany or Spain).

8. Even if the comparative analysis of the country practice did not distinguish any prevailing form of legal acts governing land consolidation, the work experience with legal acts of different countries clearly advocates for the adoption of a separate legislation or chapter in other laws, dedicated exclusively to land consolidation. Land consolidation is a particularly complex instrument and ensuring ease in its understanding and implementation are key elements for its success. In this context, concentrating land consolidation related provisions in one law would facilitate its comprehensiveness to all stakeholders involved,

9. Also, it should be considered that the introduction of a separate legislation dedicated to land consolidation would facilitate the possible amendments of the law. Changing a code or a wider application law would generate more legislative work as compared to the changes to a specific law of land consolidation.

10. Depending on the needs of the society applying land consolidation, this instrument may be adopted to attain different objectives. For a long period of time agricultural development was the key objective of land consolidation, designed to address fragmentation of land and improve economic efficiency of the farms. During the last decades however, a clear shift from single-purpose towards multi-purpose land consolidation has been characterized from country practice in Western Europe. In most countries, agricultural development objectives are currently integrated with infrastructure development, environmental objectives, etc.

11. The WPLA and the FAO strongly promote multi-purpose land consolidation and a clear definition of its objectives in national legal acts. A multi-purpose approach should, on the one hand, ensure the most beneficial use of the land consolidation instrument, as a wider range of goals would be achieved. On the other hand, a multi-purpose approach should be considered as an instrument to ensure an integrated approach towards the different objectives. For example, agricultural objectives should be harmonized with environmental and social objectives and land consolidation should not promote monoculture agriculture, which is heavily dependent on chemicals

12. It should be noted that when in the process of drafting new land consolidation legislation, objectives should be clearly stated and their implementing instruments well matched. Otherwise, the legislation runs the risk of remaining purely declaratory. Further, incorrectly implementing such legislation may lead to a wasted land consolidation opportunity, as it is unlikely that the same area will be frequently consolidated.

13. Several main types of country land consolidation objectives could be identified from the country practice:

- (a) Land consolidation as an instrument for agricultural development;
- (b) Land consolidation integrated into broader local rural development including needs for improved agricultural infrastructure;
- (c) Land consolidation as a tool for environmental projects;
- (d) Land consolidation as a tool for large-scale infrastructure projects.

14. Land consolidation principles serve to guide all relevant frameworks, from the land consolidation legislation to the lowest level regulations and manuals. These principles may emanate from national law, but also from international documents, such as VGGT and others. Based on country and international experience, several main principles of land consolidation could be identified. The list below is not exhaustive and may evolve in the future. The following principles are identified and considered in this document:

- (a) “At least as well-off principle”;
- (b) Sustainability and environmental protection;
- (c) Participatory approach;
- (d) Gender equality;
- (e) Transparency.

15. In addition, to the aforementioned principles of land consolidation, it should be noted that land consolidation legislation should provide for mechanisms which guarantee that the legitimate rights of all land consolidation stakeholders are taken into account and respected.

IV. Recommendations

16. As a result of the study, 27 recommendations were formulated which are detailed in the Annex. The 27 topics cover many aspects of land consolidation such as: key features, objectives, institutional, and financial provisions, as well as topics for the implementation of land consolidation, such as reallocation planning, valuation of property, cadastral surveying and land banking. The following recommendation section focuses on four key recommendation areas that define the pre-conditions for land consolidation projects.

(a) Key recommendations 1: Key features of land consolidation regulation

- Land consolidation legislation should be respectful of fundamental human rights, established in international, supra-national or national legal acts and documents.
- Land consolidation legislation should contribute to achieving the 2030 Agenda and the Sustainable Development Goals (SDGs).
- Land consolidation legislation should be fully in line with the general principles of the (VGGT) and would follow the specific guidance on land consolidation in the VGGT.
- Land consolidation legislation should provide for proper mechanisms to guarantee that the legitimate rights of all land consolidation stakeholders are taken into account and respected.
- Land consolidation legislation should be drafted in a simple and comprehensive way, avoiding over-regulation. It should also be accompanied by implementing regulations as well as technical documents (such as guidelines, instructions, operations manuals, formats and standards, etc.) to provide more detailed instructions.
- A land consolidation legal framework should be based on a strategic approach aligned with broader national and international policy objectives. Such strategic approach should be integrated into the policy framework either by developing a separate National Land Consolidation Strategy or by articulating it in other strategic documents of broader scope.

- Introduction of a land consolidation instrument in the country should also be accompanied by the respective changes in other legislation, such as registration of properties, cadastre, mortgages and others.
- Land consolidation legislation should stipulate whether land consolidation is a voluntary process or a majority-based process (or both).
- If applicable in the respective legal system, it is recommended that the national legal framework ensures that the public interest is included in the status land consolidation instrument. This is of particular importance in case of majority-based land consolidation.
- The process of introduction of land consolidation in the country and the drafting of land consolidation legislation should include broad consultations with potential land consolidation stakeholders, such as civil society organizations representing the interests of landowners, farmers, nature, environment, etc.

(b) Key recommendations 2: Objectives of land consolidation

- It is recommended that the legislation define broad overall land consolidation objectives, which would reflect a sustainable multi-purpose approach and be designed for the specific situation in the country. Thus, it is recommended to include land consolidation objectives that go beyond only reducing land fragmentation.
- Objectives should regard both agricultural purposes, and other relevant objectives related to infrastructure, environmental management and socio-economic development.
- Strategic land consolidation priorities should not be detailed in the land consolidation legislation but in the implementing operational regulations or other types of documents, which may be subject to periodical review without engagement of complex legislative procedures.
- Land consolidation legislation should include provisions highlighting that land consolidation contributes to agricultural and rural development via the reduction of land fragmentation and enlargement of holdings, farms and parcels so that they become economically viable and sustainable.
- Land consolidation legislation should also ensure that implementing authorities are able to apply land consolidation in large-scale public initiated infrastructure (for example, highway or railway) or nature restoration or climate change mitigation and/or adaptation projects and compensate landowners and farmers in land instead of in money, using land consolidation as an alternative to expropriation.

(c) Key recommendations 3: Principles of land consolidation

- Land consolidation legislation should ensure the implementation of the “at least as well off” principle³.
- Land consolidation should contribute to sustainable development. Environment friendly mechanisms and safeguards, ensuring the sustainability should be included in all land consolidation projects.

³ “at least as well off” principle: key principle of land consolidation, expressed in VGGT means, that the situation of any of land consolidation stakeholders may not be worsened by the implementation of land consolidation project

- Land consolidation legislation should provide the opportunity to integrate land consolidation with broader local development needs, by comprehensive local community development planning based on a participatory and inclusive process.
- Land consolidation procedures should remain operational following their implementation and ensure the attainment of various types of land consolidation programmes or projects.
- Transparency, inclusiveness and active participation of a wide range of stakeholders should be ensured in the land consolidation projects, not limited only to the landowners or formal right holders. Accordingly, communities, farmers' associations, women's organizations, local authorities and others should be involved in the process in order to achieve the most efficient and balanced land consolidation result.
- Gender equality should be one of the principles guiding the implementation of land consolidation programmes and projects.

(d) Key recommendations 4: Institutional framework

- Land consolidation legislation should define which national or regional institution or entity is mandated to approve land consolidation plans in land consolidation projects. The members of such institution or entity could include representatives of respective national, regional and/or local institutional and non-institutional land consolidation stakeholders.
- It is recommended that Governments establish or identify a public lead institution for land consolidation, which is overall responsible for the implementation of the land consolidation programme and its projects. It is recommended that the lead agency is empowered and provides good conditions to achieve multiple objectives of land consolidation, including good conditions to national and policy level responsibilities and provide guidance and coordination project implementation in the field.
- Distribution of land consolidation functions and mandates among different institutions, entities and bodies should be made and regulated in a manner, which would ensure the attainment of land consolidation objectives and the respect of land consolidation principles.
- The public institution involved in the implementation of land consolidation projects should be responsible for conducting all phases of land consolidation projects, including the field work.
- The lead agency should develop training programmes and materials for all phases of land consolidation projects, certify and/or license service providers, implementing land consolidation projects. The law should provide for flexibility in deciding on the works and services to be sub-contracted.
- The public institutions involved in the land consolidation process should be empowered to lead the process of clarification and solving ownership and property registration related problems in land consolidation projects.

17. Based on the study presented in this note, a guide on legal framework for land consolidation is currently being developed. The guide will assist countries in introducing land consolidation practices into their legal frameworks. It is expected that the guidelines are to become an efficient tool in the ongoing and future land consolidation related projects and beyond, as well as a useful instrument for comparison of regulatory frameworks in countries where land consolidation is already developed thus facilitating the exchange of best practices between countries. This guide may be also useful for both public and private

entities related to the land consolidation process and persons impacted by it. The work was conducted by the WPLA, FAO and supported by LANDNET.

18. The Working Party is invited to take note of the status of this study and request its Bureau to finalize the guide and present it to the Eightieth session of the Committee on Housing and Land Management.

Annex I

Key recommendations

- Key recommendations 1: Key features of land consolidation regulation
 - Key recommendations 2: Objectives of land consolidation
 - Key recommendations 3: Principles of land consolidation
 - Key recommendations 4: Institutional framework
 - Key recommendations 5: Sub-contracted service providers
 - Key recommendations 6: Right holders and other land consolidation stakeholders
 - Key recommendations 7: Stakeholders' meeting
 - Key recommendations 8: Elected representative bodies
 - Key recommendations 9: Financing sources
 - Key recommendations 10: Specificity of land consolidation budgeting
 - Key recommendations 11: Initiation of land consolidation project
 - Key recommendations 12: Feasibility study
 - Key recommendations 13: Identification of right holders and other project stakeholders
 - Key recommendations 14: Definition and adjustment of project area
 - Key recommendations 15: Ex-ante environmental impact assessment
 - Key recommendations 16: Consultations with right holders and other stakeholders
 - Key recommendations 17: Valuation of property
 - Key recommendations 18: Re-allotment planning
 - Key recommendations 19: Land consolidation plan
 - Key recommendations 20: Cadastral surveying and registration of properties
 - Key recommendations 21: Financial settlements
 - Key recommendations 22: Implementation of field works
 - Key recommendations 23: Monitoring and evaluation
 - Key recommendations 24: Legal remedies and resolution of disputes
 - Key recommendations 25: Land banking
 - Key recommendations 26: Expropriation and other mandatory land transfer banking
 - Key recommendations 27: Taxes and fees
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