
***LEASING OF AGRICULTURAL LAND
OWNED BY THE STATE***

by

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Terra Institute, Ltd., has provided technical assistance in Albania since 1994. Under both the Land Legislation and Policy Project (LLPP) and the Land Markets in Albania Project (LMAP), the Institute has archived almost 50 reports, papers, draft legislation, and commentaries on land legislation, land registration, land tenure, and other land market-related activities in Albania.

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1. INTRODUCTION

In order to realize the goals of a fluid land market, it is necessary for the Government of Albania to examine carefully both the manner in which it has privatized property and the extent to which it should distribute State-owned property into private hands. Although the decision has been made to distribute nearly all agricultural lands to private owners, some legal consequences of the distribution appear to leave some unanswered questions concerning land policy.

At the time of the initial distribution of ex-cooperative land, in 1991, all privatized lands were to be held as either “owned” or “in use” by individuals designated according to a legislatively defined process.

The “in-use” category was intended to provide land-holding opportunities for persons who were not permanent residents of the rural communities in which they resided, such as schoolteachers, who could be reassigned to a new school or teaching locale. The land they were given “in use” was to remain with them as long as they were resident in the community where the land was located. If reassigned, they would give up the land, presumably to their replacement, and move to a new community, where they would hopefully be allocated a new parcel of land to use (“in use”) as long as they remained in their new setting.

There were other situations in which the distribution of “in-use” titles took place. Agricultural land that was limited in its productive potential (for example, parcels with highly saline soils) was distributed as “in use” because farmers feared future taxes, which might be higher on “owned land” than could be paid from the productive capacity of the land. Land along canals in irrigated zones, which the District Cadastral offices wanted to leave as a right of way for those holders of parcels who had no other way to access their parcel or get their harvested crops to a public road, was also given in-use.

Relatively few in-use allotments were made in this initial distribution of ex-cooperative land. However, in 1993, a government policy was implemented that provided that those State Farm lands that had not previously been cooperative lands were to be distributed “in use.” The reasoning was that (1) this land was brought into production with substantial State investment, which the State should be able to recover in the future through joint ventures or other uses; and (2) it would be easier for re-establishing large enterprises, should the opportunity arise, if the allotments transferred only use rights.

Unfortunately, this decision did not take into consideration the ultimate legal and social consequences of the distribution. These allottees of State Farm lands comprised individuals who were different from most of the persons who received “in use” lands in the initial 1991 distribution of the ex-cooperative lands; they were similar, instead, to those individuals who received ownership interests in the distribution of former cooperative land. These persons were employees of the State Farms and were potentially permanent settlers on the land. Furthermore, even though the intention was for the State to retain the option of recovering management of the land since the allottees were no longer agricultural employees of the government, it is unlikely that the government would be involved in retaking the allotted land or transferring persons from one area to another.

Finally, the State Farm land distributed “in-use” is in some cases some of the most productive land in the country. Under usufructuary title, it would be difficult for the holders, using the land as collateral, to convince banks to lend to them. Their tenure would be insecure, meaning that a bank would not be able to be sure that even a good farmer would be able to keep possession of the land in order to repay a loan. Moreover, the re-possession of the land by a bank following default on a loan would mean that the land would probably revert to the Ministry of Agriculture without the bank’s being able to dispose of the land to recover the debt owed.

Different situations involving land distributed as “in use” should be treated differently. The “in use” titles for agricultural land can be dealt with consistently, while other measures are needed for the titles granted to provide for temporary resident use or for in-use access to land. The in-use titles for agricultural land, including land that is of poor quality, could be transferred into leasehold or other contractual type of interest. Such interest would be more secure and potentially “salable” in the case of a foreclosure on a defaulted loan.

The purpose of this report is to explore the situation in relation to in-use titles granted for ex-State Farm lands and to make recommendations that will lead to a stable legal and social situation in relation to tenure security, agricultural development, and the operation of a fluid land market.

2. CURRENT SITUATION ON LEASING OF AGRICULTURAL LAND

With the amendment to Law 7501 permitting leasing, it is now possible to rent agricultural land. However, the mandate on leasing states, “owners of the agricultural land may rent land.” The amendment appears to give the right to lease (act as a lessor) only to those persons or entities, including the State, who have ownership interest.

If the State reserves land to itself by not allocating it as private property, it retains the ownership interest. If the State allocates land and in doing so provides less than an absolute interest (such as “in-use,” for example), it also retains the “ownership” interest. Under the Immovable Property Registration Act, this ownership interest, whether it refers to allocated or unallocated State land, will be registered. If it is allocated as, for example, an “in-use” interest, the State ownership interest will include a subsidiary interest on the part of the user. The registration will take place on the folio referring to the State as the owner of the land in question.

In accordance with Amendment 7751 to Article 3 of Law 7501, the government is now able to lease that land. Thus, the implication of the amendment is to create the possibility for the government or any other owner to lease land, whereas the prior version of Law 7501 did not explicitly give either the government or a private landowner the right to lease the land.

Through the privatization programs of the Ministry of Agriculture and Food, the State has already allocated much of the State Farm land as interests “in use.” Unfortunately, these “in-use” interests do not have a satisfactorily defined set of rights and obligations attached to them. In particular, the holders of “in-use” titles may have difficulties in offering these properties as guarantees for loans. Moreover, these holders may feel that the State could re-possess the land arbitrarily, thereby inhibiting the holders in their use of conservation practices or in making other investments to maintain or improve the productivity of the soil and other economic activities relating to the use of the land.

Although it could be acceptable to leave the “in-use” interests as they are and simply define with some specificity what conditions attach to them, it may make more sense to link with the Civil Code’s provisions for the rights and obligations of lessees and lessors and, in light of the amendment to Law 7501, to consider a leasing program of State- owned agricultural land that has been distributed through in-use titles.

The amendment that authorizes leasing clearly provides the private owner with the opportunity to lease his/her land. It therefore becomes relevant to consider converting the “in-use” interests into leases.

3. LEASEHOLD POLICY ISSUES

There is currently no clearly formulated leasehold policy for State-owned agricultural land in Albania. The policy of retaining State ownership must be reviewed and clarified. If the government intends to retain this land, it must then act with dispatch to define the rights and obligations of what it retains. It is also important to evaluate the options for the development of leases.

a) Cropping considerations. In order to put in place a system of leasing of agricultural lands, it is imperative to determine what kinds of cropping systems would be involved. It is obvious, of course, that different crops are grown in different areas of Albania. The policy concerning cropping systems will determine how the “model” lease contract will be written, where the flexibility should be, and what many of the terms of the contract would be. The length of the leasehold term would be directly dependent on the selection of the crop to be planted. If it were anticipated, for example, that orchards would be developed on leased land, the leasehold term would have to be long enough to allow the lessee to effectively develop the land and benefit from the returns. This is the case whenever large investments are necessary for the effective utilization of the leased land.

b) Length of lease/inheritance/renewal. In light of (a) it is necessary to define security of tenure for the lessees. This must be inherent in the program of leases. The term of the lease and whether it is inheritable or renewable is directly related to the activity on the land. Thus, if long-term crops are involved, the term of the lease should be lengthy.

c) Identification of potential lessees. If there is to be a system of year-to-year leases with options for lease/purchase for some lessees, a policy must be set to determine how lessees will be selected for each type of lease. If the decision is made to move toward a lease/purchase option for some lessees, the present holders of “in-use” land could be granted probationary leases for a period of, for example, three years. At the end of that period, either the present lessees will be granted a renewed lease for a longer period, for example, twenty-five years, or new lessees will be chosen. In any case, it is imperative to have a system in place through which potential lessees can be designated. This may mean that a person will apply for a particular lease arrangement or that the State will designate certain areas for one type of lease agreement. In either case a system of priorities will have to be designed to determine who would be eligible for a lease on State agricultural land.

d) Fixing the amount of rent. A procedure is needed for fixing the rent level for both the probationary lease period and the permanent lease. Since the intent is to simply convert in-use titles to leases, it is probably not possible to structure an auction for these leases. A more likely option would be a rental level based on average expected income from the use of the land, taking into account the productivity of the soil, the location of the parcel, existing infrastructure, and so forth. This means that a procedure for valuing the land from an agricultural point of view would be necessary. A second procedure would be some mechanism for automatic adjustment in the monetary value of the rent to allow for possible currency instability once the permanent lease is granted. Rental levels based on the price of a typical crop are common in rural areas and could be adapted to this situation.

e) Allocation procedures and forms. The administrative system through which the lessees are chosen will need to be administered through application forms and other procedures. These must be prepared and put in place.

f) Relevance of a lease/purchase plan. The decision concerning the ultimate disposition of the land involved in the lease program needs to be determined. It is possible that leases can be utilized as an interim step in the distribution of the land, leading to an ownership interest to ensure that the most appropriate person has received the allotment. In that case the conversion of the leasehold interest into an ownership interest is possible. The rent payment could then be applied to the cost of the land as part of the purchase price. It is important to define what the program of distribution of non-ownership interests includes. If the government does not want to administer a lease program for the long term, it may make sense to institute a lease/purchase plan. This would allow decisions leading to ownership to be made over a twenty or twenty-five year period in order to guarantee that there is the best possible use and development of agricultural land.

g) Conditions for termination of lease. Conditions leading to the termination of the leasehold interest must be clearly defined. Definitions of idle, abandoned, or misused land must be clearly set out and included as covenants in the lease. Expectations by the lessor as to levels of development and standards of husbandry should be clearly understood. Procedures for the termination of the lease must be designed and clearly set out in understandable language, and mechanisms for carrying out the stated procedures must be put in place to provide adequate backup for the system.

In summary, there are several policy issues, and some options to consider:

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| POLICY ISSUES | SOME OPTIONS |
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| a) Length of lease | Year to year; Medium term (such as 5 years); Long term (such as 25 years) |
| b) Renewal procedures | Automatic; Upon satisfactory completion of the terms of the lease; Upon the request of the lessee or lessor; |
| c) Procedures upon death or permanent disability of lessee | Automatic passing to heirs or designated representative; Return to the state for re-assignment; |
| d) Transfer of lease to another by lessee | Allowed automatically; Allowed with the permission of lessor; Prohibited |
| e) Convertibility to ownership | Lease converted to ownership upon satisfactory completion of lease contract; Not allowed |
| f) Time required for notice of termination by either party | Short (e.g., 30 days) Medium (e.g., 180 days) Long (e.g., 1 year) |
| g) Compensation to lessees for investments made with prior approval | Lessor pays in cash but discounted for depreciation at end of lease; Lessor pays within a specific period of time; Deduction from rent owed by lessee |
| h) Rent payments | Value of rent, how calculated? Period during which rent is exempted; How to adjust rents to take into account inflation |
| i) Liability for land tax | Will lessees be liable for tax in addition to rent? |
| j) Conditions for termination of lease | What are criteria? Who decides? Right of lessee to appeal? |
| k) Land use requirements | How detailed in the lease? Who represents the State to verify lessee land use as appropriate? |
| l) Selection of lessees | What methods will be used to select people who get a fixed-term lease versus those which get a lease-purchase arrangement? |
| m) Lease agreement | If a written agreement is required, who will prepare the agreement and how will the holders of the in-use titles be convinced to sign to such an agreement? |

4. THE LEASEHOLD ADMINISTRATION PROBLEM

There are a number of essential steps to creating a leasing program for state land once the decision to have a leasing program and general policies have been made. First, the manner in which such an effort would be administered needs to be determined. Next, steps must be put in place to establish administrative and personnel structures.

The institutional home for the entire leasing system, which deals with land registration, cadastral mapping, and administration of a State lease or lease/purchase program, needs to be determined. If the Ministry of Agriculture and Food is to be the administrative home for any of these activities, the Ministry will have to be partially restructured

At this time, the Department of Lands, Irrigation and Rural Development in the Ministry of Agriculture and Food appears to be the logical base for the administration of a leasehold system. The administrative mandate of the department as it is presently structured, however, needs to be reviewed. It presently has very broad authority, and

one option is to divide it into three separate departments, one of which would be a Department of Lands. For the administrative oversight of a leasing system, a director-level person should be appointed.

Another option would be the appointment of a Director-General of Lands, who would have the status of “Landlord of State Property.” This person would have the authority to carry out policy and represent the State in all its dealings concerning State-owned land, buildings, and other immovable property. The Director-General’s authority would be for all property, urban and rural. This would mean creating a policy oversight position for all State property, which would include, in addition to all agricultural lands, for example, schools, hospitals, and all other State grounds. The central authority would have the responsibility of directing regional, district, or other local administrative personnel on a policy level. Coordination of all matters that would be uniformly administered would be directed from the Office of the Director-General of Lands.

Whichever option is chosen, a centrally directed land administration system will need to be installed to represent the State on a day-to-day basis in villages, communes, and districts. Local levels of administration must be responsible for the daily oversight of any program of land allocation. This includes, *inter alia*, an inspection function to ensure that the system is realizing the objectives for which it has been designed. Therefore, it will be necessary to create land administration capability throughout Albania.

5. LEGISLATIVE AND RELATED MATTERS

Certain legislative enactments are necessary to implement an agricultural lease program. This legislation should explicitly clarify what the currently implied terms of any lease are, what aspects of a lease are to be negotiated on a case-by-case basis, and that in-use allotments specifically are to be subject to these terms.

In addition, a set of standard agricultural leases or model leases must be developed to support the goals and objectives of the leasing program.

Finally, Ministry officials and potential lessees should hold a series of discussions concerning the terms of model leases for different conditions and protecting the rights of the lessees as well as the lessor. The State has already distributed agricultural land without passing ownership to individual farmers. The situation must be explored with care to determine what provisions, as stated above, should be included in the model agricultural lease.

6. CONCLUSIONS AND RECOMMENDATIONS

Government should consider realistically the extent to which the State will realistically retain ownership of agricultural land, with careful analysis of the administrative system necessary for the administration of leases. Once the decision is made to have such a program, it is then fundamental to create a full system that allows for the leasing or lease/purchase of State agricultural lands.

A series of workshops would be helpful to discuss the policy and institutional options outlined above with field-level personnel of the Ministry of Agriculture and Food (MOA), present holders of in-use allotments, as well as bank officials. The points raised in this report and the drafts of the model lease and the leasehold act could be the basis for such workshops. Out of these discussions, strategic decisions outlined above could be made regarding in-use titles.

An analysis should be carried out as soon as possible to determine the institutional structure that is feasible for the implementation of a land administration system. This should include the structure of a Lands Department as a centrally and locally controlled administrative unit and the location within the government bureaucracy for such a Lands Department. Two major options for the latter are a separate Ministry of Lands with overall authority for all issues of land and a division of the Ministry of Agriculture and Food for agricultural lands and of the Ministry of Construction for urban lands.

The specific conditions under which people are presently holding of land through in use titles or through other informal means and who would be potential lessees should be described and analyzed as soon as possible.

Wherever feasible, “in-use” titles should be converted into a leasehold interest by defining the conditions of the landholding and drawing up a specific contract for each user/lessee.

A model lease with various options should be prepared to define the rights and obligations of the lessor (State) and the lessee.

Legislation on leasing of agricultural immovable property should be prepared to provide legal security and definition of the lease relationship to facilitate immediate commencement of a leasing program for agricultural lands.