

***Legal Regulations for Construction on Agricultural Land in Accordance
with the Urban Planning and Development Law***

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Abstract:

Agricultural lands are heralded as a national treasure and a pivotal economic asset, cherished for their historical and social significance. Consequently, they are accorded special legal protections. Legislation imposes stringent conditions and provisions on .construction activities on these lands

This study explores the construction permit, a mandatory document for anyone intending to erect a new building or modify an existing one. By mandating a permit that respects the unique agricultural and ecological characteristics of these lands, effective .protection against construction violations is facilitated

Keywords: Agricultural Lands, Protection, Prior Authorization, Construction Permits.

ملخص:

تعتبر الأراضي الفلاحية ثروة وطنية وموردا اقتصاديا هاما، إضافة إلى أهميتها التاريخية والاجتماعية ولهذا فهي تحظى بحماية قانونية خاصة، حيث قيد المشرع البناء عليها بشروط وأحكام خاصة، وعليه ستتطرق هذه الدراسة إلى رخصة البناء باعتبارها الوثيقة التي تشترط حيازتها من طرف الشخص الذي يريد تشييد بناية جديدة أو تحويل أو تغيير لبناية موجودة، وعليه فإن حماية هذه الأراضي من تجاوزات البناء لا يكون إلا بموجب ترخيص بإقامة ما يهدف إلى مراعاة طبيعتها ووجهتها الفلاحية.

الكلمات المفتاحية: الأراضي الفلاحية، الحماية، الترخيص المسبق، رخصة البناء.

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I- Introduction:

The safeguarding of agricultural property is a critical concern that significantly influences societal development. It serves as the bedrock for economic rejuvenation and social unity, and is fundamental to ensuring food security. The state, through its property policies, regulates this type of ownership which has seen extensive developments and reforms over time.

Study Importance:

This study underscores a suite of safeguards devised by the Algerian legislator, designed to preserve the roles played by agricultural lands. This preservation is secured by imposing legal restrictions on construction and urban expansion on these lands, thereby curbing violations.

Study Objective:

This research endeavors to delineate the legislative measures and legal frameworks aimed at curbing urban encroachments on agricultural lands, averting the loss of their agricultural identity, and detailing the prerequisites and procedures necessary for acquiring a construction permit on these lands.

Research Methodology:

The study employs a descriptive analytical methodology to elaborate on the concept of agricultural lands and construction permits, and to scrutinize the legal statutes enacted by the Algerian government to safeguard these lands from unauthorized constructions. The discourse is structured into two main sections: the first delineates the legal foundations of agricultural lands within Algerian law; the second section elaborates on the overarching regulations governing construction on these lands.

2. The Legal Basis for Special Agricultural Lands in Algerian Legislation

The growing encroachments on agricultural lands, particularly through construction and urban development, have necessitated legislative measures to fortify the protection of these vital assets through a robust regulatory framework.

This approach is particularly crucial for operations that might alter their agricultural orientation or involve construction. Consequently, this section is bifurcated into two segments to thoroughly explore the concept of agricultural lands (the first part) and to delineate the regulatory frameworks governing these lands (the second part).

2.1 Concept of Agricultural Lands:

The Algerian state's transition through political and economic reforms towards a market economy has compelled the legislature to establish stringent rules and legal controls to regulate agricultural property, referred to as agricultural lands in Algerian legislation.

2.1.1 Definition of Agricultural Lands:

The Algerian legislator has placed considerable emphasis on agricultural lands, as evidenced by their constitutional protection. Article 21, (The Constitutional Amendment of, 2020) paragraph one of the Constitution ensures state protection of agricultural lands, (90/25, 1990) leading to the promulgation of a comprehensive suite of laws to govern these lands.

2.1.1.1 Legal Definition of Agricultural Lands:

The cornerstone of the legal framework is Law 90/25, enhanced and detailed by Order 95/26, which provides the guidelines for the technical composition of real estate properties. (Law No. 90/25)

Through the analysis of Article 04 of the Real Estate Guidance Law, the legislature categorizes lands intended for agricultural use as those that, through human intervention, yield products annually or over several years for human or animal consumption, or for direct industrial use or subsequent processing. (Asia Ouragh, 2022) Thus, the legal definition of agricultural lands is anchored in a technical standard focusing predominantly on economic factors, rather than a broad legal conception.

Meanwhile, Law 08/16, while not introducing new definitions, emphasizes in Article 31 the importance of creating a map to identify agricultural lands and those designated for agricultural use. (Rakia, 2001)

2.1.1.2 Characteristics of Agricultural Lands:

As detailed in Article 04 of Law 90/25:

- Lands must be productive rather than barren.
- Productivity must arise from human agricultural activities, such as plowing and irrigation, thereby excluding lands that are naturally productive like forests or pastures.
- The lands should produce annually, depending on the crop type, and must economically contribute by providing products for human and animal consumption, whether used directly or processed.

2.1.2 Classification of Agricultural Lands:

Agricultural lands are categorized based on several criteria, including soil science parameters, slope, climate, and irrigation capabilities. These categories range from very fertile to less fertile lands. (90/25 S. A.)

2.1.2.1 Classification of Agricultural Lands by Fertility Level:

- Very fertile lands are characterized by their high productivity, superior soil quality, and either existing irrigation or the potential for it. Fertile lands have moderate to good soil depth and are often situated in humid or semi-humid regions without topographical constraints.
- Moderately fertile lands include irrigated areas with some topographical and depth challenges, and non-irrigated lands of moderate depth with variable rainfall but minimal topographical barriers.
- Less fertile lands face significant challenges such as considerable topographical barriers, inadequate rainfall, issues with soil depth, salinity, and slope. (06-09)

1. 2.1.2.2 Classification of Agricultural Lands by Legal System:

The Algerian legislator has classified agricultural lands under Law No. 90/25, which includes real estate guidance amended and supplemented by Order No. 95/26, according to their legal system into (national property, private property, waqf property): (See Article 23 of Law No. 90/25)

Thus, we find that agricultural lands are classified according to the legal system they belong to, and therefore they are divided into:

- Agricultural lands that are national properties owned by the state. (90/30, 1990)
- Agricultural lands that are privately owned.
- Agricultural lands that are waqf properties. (91/10, 1991)
- These classifications are legal, considering the owning entity. (Soualem, 2020)

2.1.2.3 Classification of Agricultural Lands Based on Regional Capacities:

This classification hinges on the climate and irrigation status of the land, a system first outlined under Law No. 88/33, the Finance Law of 1989 . (Samain Chama, 2002)

2.2 Provisions Related to Agricultural Lands:

These lands are designated as sectors where urban development is restricted to preserve their agricultural nature and mitigate the risks associated with urbanization and construction. Despite these restrictions and penalties, encroachments on agricultural lands continue to escalate, threatening significant areas of state-owned agricultural property. (80-81, 1988)

2.2.1 Laws Regulating Construction in Agricultural Areas:

The increasing demand for agricultural lands, driven by urban development needs, has necessitated a rigorous monitoring system to manage land use conversions and construction activities. This regulatory framework aims to protect these areas as legally designated conservation zones.

2.2.1.1 Urban Planning and Development Law:

Through the land use plan, a tool for secondary urban planning introduced by Law 90/29 alongside the master urban planning and development plan, the legislator specifies the areas of agricultural lands that must be conserved and protected. These lands are generally not intended for construction, except for structures that enhance the economic viability of the agricultural activities and promote better utilization of these lands. (Bacha & Laila Zarouki,, 2017)

2.1.2.2 Agricultural Guidance Law

Under the stipulations of Law No. 16/08, particularly Article 15 and without undermining the directives of Article 36 of the Urban Planning and Development Law, (See Article 36 of Law No., 1990) agricultural lands can only be reclassified through regulatory measures.

This law is dedicated to providing robust protection for agricultural property, primarily through:

- Developing agricultural guidance plans which act as the foundational framework for conserving agricultural spaces, ensuring their preservation, and promoting their rational and optimal use within their natural capacities.
- Empowering agricultural investors, both individuals and entities, to exploit agricultural lands effectively. This exploitation is aimed at fostering integrated, coherent, and sustainable agricultural development at both local and national levels.

Regarding Executive Decree No. 03/313, which outlines the conditions and procedures for reclaiming agricultural lands that belong to national properties and are integrated into the urban sector, alongside Article 53 of the Finance Law of 1998, these regulations facilitate the reclamation of public sector agricultural lands within urbanizable sectors through special procedures, bypassing the need for expropriation for public benefit.

- It is strictly prohibited to alter the use of agricultural lands in a manner that changes their inherent agricultural nature, thereby safeguarding these properties.
- However, with the enactment of Law 08/16 on guidance, particularly the aforementioned Article 15, it is reinforced that agricultural lands, whether located within urbanizable sectors or outside, cannot be reclassified.

This article stipulates that no process of declassification, whether it be through reclamation or segregation, can be executed except in accordance with existing laws or regulations designed to protect agricultural lands.

2.2.2 Regulatory Frameworks for Building on Agricultural Lands

The legislator has fortified the protection of agricultural lands with a comprehensive set of laws and has highlighted protection mechanisms by regulating construction activities through legislative texts. A presidential directive has been issued in this context, mandating the preservation of agricultural lands as a crucial and permanent component of any policy formulated and implemented in the field of urban planning and development. (Presidential Instruction No., 1995)

This directive is a response to the continuous population growth and the pervasive encroachments on these lands, which often ignore legal standards and conditions, resulting in unplanned urbanization that has consumed thousands of hectares of agricultural land for urban expansion purposes.

1. Prime Ministerial Directive No. 01, dated 19/04/2010: In response to the pressing needs of public development projects, Prime Ministerial Directive No. 01 was promulgated. (Prime Minister's Instruction No , 2010) This directive allows for the appropriation of agricultural lands with low to medium productivity for use in real estate projects that serve the general public good. In cases deemed critically urgent, it permits the use of highly productive agricultural lands, but only if there are alternative construction sites available in other municipalities, thereby potentially relocating the projects.

2. Directive No. 02 issued by the Prime Minister on 12-05-2013 (Prime Minister's Instruction No., 2013) : This directive pertains to the appropriation of

agricultural lands for essential public development projects and introduces more flexible procedures and arrangements. It authorizes governors to annually approve the declassification of agricultural lands for urgent needs related to public projects such as: (Azzedine Ouaadi, 2020)

Electric transformation centers

- A. Gas expansion stations
- B. Water tanks and towers
- C. Educational institutions
- D. Local public health facilities

This directive is designed to balance the preservation of the agricultural character of the land with the developmental needs of the community. However, it faces legal challenges due to the lack of an executive decree, as mandated by Article 15 of the Agricultural Guidance Law. (Mohamed Saleh Belagoun, 2020)

3. Ministerial Directive No. 03, dated 27-05-2018 (Instruction): This directive amends and supplements Directives No. 1 and 2 concerning the appropriation of agricultural lands for public development projects. It underscores the adherence to specific principles that regulate the conversion of agricultural lands, as outlined in the Real Estate Guidance Law. The directive sets forth stringent measures to ensure that the land use changes accommodate critical needs, aligning with intensive development programs and infrastructure projects. Key provisions include:

- A. Absolute prohibition on reclassifying highly fertile lands
- B. Prohibition on declassifying lands owned by individual or collective agricultural investors

Mandating a comprehensive evaluation process for any other proposed land reclassification, which involves field assessments by a joint provincial sectoral committee led by the governor, along with representatives from relevant administrative bodies like agricultural services. This committee is responsible for preparing detailed reports on the land quality.

Subsequent to these evaluations, appropriation requests are reviewed by a ministerial committee tasked with these decisions. Approvals are implemented only after an official decree is issued by the Council of Ministers, ensuring a rigorous, controlled, and legally compliant process for land use conversion.

The directive underscores the imperative to construct facilities with an acute awareness of the urgent need to safeguard agricultural lands, which are inherently limited. Public program owners are encouraged to develop projects on

available real estate, favoring vertical construction to minimize the footprint and thereby adhere to the Real Estate Guidance Law and the Agricultural Guidance Law.

This approach is aimed at ensuring the conservation of agricultural lands, particularly those that are highly fertile, from unnecessary sprawl and degradation. (Fissih, 2022)

3. General Provisions for Construction on Agricultural Lands

Given the economic and social significance of agricultural lands, the Algerian legislator has endowed them with robust legal protections and established stringent conditions and regulations for construction.

Despite these lands being privately owned, and the owners enjoying rights to manage their property, specific legal restrictions have been imposed to ensure that any construction does not alter the agricultural purpose of the land. Construction activities must adhere strictly to an explicitly issued permit, which conforms to detailed legislative conditions concerning both the applicant and the nature of the construction intended on agricultural land.

3.1 Conditions for Obtaining a Building Permit on Agricultural Lands:

The authority to manage agricultural property rests with the owner, and by extension, to any lawful possessor. To qualify for a building permit, an applicant must meet certain criteria stipulated by law. (See Article 41 of Executive Decree No. 15/19 , 2015) The Executive Decree 15-19, particularly Article 41, details the protocol for preparing urban planning contracts and issuing building permits to eligible individuals.

3.1.1 Qualifications of the Building Permit Applicant:

Legal stipulations provide exceptions to the general rule against constructing on agricultural lands, embedding legal controls to oversee such developments. As per Article 50 of Law 90/29 on urban planning and development, the right to build is inherently tied to land ownership and must comply with stringent legal and regulatory standards regarding land use.

Therefore, an applicant seeking a building permit for agricultural land must be the legal owner of the land, having acquired it through legitimate means.

Documentation such as a copy of the ownership deed or property register must be provided. If the applicant is a legal entity under private law, they are required to furnish a copy of their articles of association, as dictated by Article 42 of Executive Decree 15/19. This ensures that all constructions on agricultural

lands are legally justified and aligned with the overarching goals of land use and preservation policies.

Despite the general requirement for a land ownership contract in the application for a building permit, certain municipalities, as part of state assistance in rural housing, have made an exception. These municipalities do not require the ownership contract for those benefiting from state aid for building rural housing, acknowledging that many beneficiaries lack property deeds. This adjustment simplifies the permit acquisition process, which is critical given the circumstances of these applicants:

- **The Agent:**

- The owner's representative, designated by a power of attorney as prescribed by Algerian civil law, can act in general or specific capacities for the owner according to the stipulations in Article 42 of Executive Decree 15/19.

- **The Legally Authorized Tenant:**

- Normally, tenants are not permitted to alter the leased property. However, in exceptional cases, a tenant of agricultural land may apply for a building permit if they have secured explicit permission from the landowner.

- **The Body or Service to Which the Land or Building is Allocated:**

- Entities may obtain construction rights on agricultural lands through an administrative allocation contract for public institutions of administrative, scientific, technological, or technical nature. This is organized by state property services. (Executive Decree No. , 2011)
- For public institutions of industrial, commercial, or other economic natures, a concession contract is issued following the specifications agreed upon by the body's representative and the provincial director of the National Office of Agricultural Lands, as outlined in Executive Decree No. 11/06, dated 01/2011. These provisions permit such bodies to construct on agricultural lands as stipulated in the specifications approved by the ministerial decision on 29-03-2011. (Mohamed Lamine Salek, 2020)

- **The Possessor under the Land Reclamation Law:**

- Article 09 of Law 83-18, dated 13-08-1983, which concerns the possession of agricultural real estate, allows possessors to build residential units for farmers and their families, (See Law No. 83/18, 1983) as well as structures necessary for farm operations.

- **The Possessor or Occupant in the Context of the Real Estate Guidance Law:**

- According to Article 43 of the Real Estate Guidance Law (Article, 1990) , any individual with a legal occupancy certificate can act as the de facto owner, with the right to apply for a building permit. This provision only applies if the possession is peaceful and continuous, thereby fostering agricultural investment and aiming to enhance production significantly.

- **The Concession Holder:**

- As stipulated by Law 10-03, dated 15/08/2010, and further detailed in Article 02 of the specifications annexed to Executive Decree No. 10/326 dated 23/12/2010, (Law No. 10/03 , 2010) concession holders have the explicit right to make any adjustments or constructions on agricultural lands owned by the state that are necessary for enhanced exploitation. These provisions ensure that the agricultural operations can be optimized through appropriate structural additions. (See Article 02)

- **The Beneficiary of Endowed Agricultural Land:**

- The rights of individuals who benefit from endowed agricultural land, whether the benefit is in-kind or personal, are protected under Article 26 repeated 2 of the Waqf Law. (See Article 26 r, 2010) Additionally, the terms and conditions for leasing these lands for agricultural purposes are outlined in the specifications attached to Executive Decree No. 14-70 dated 10-02-2014. This ensures that the usage of endowed lands adheres to designated agricultural purposes. (Executive Decree No. 14/70 , 2014)

3.1.2 Building Rights on Agricultural Lands:

Building rights on agricultural lands are restricted to structures essential for agricultural operations and public utility buildings, as per Article 48 of Law 90/29. (See Article 48) The Algerian legislator underscores the significance of agricultural real estate in economic development, leading to restricted freedoms in construction, mandating prior permits from relevant authorities.

The Real Estate Guidance Law No. 90/25 mandates that any construction technique on agricultural lands should aim to enhance the productive capacity of agricultural investments, irrespective of the legal ownership category of the concerned real estate.

If any part of the agricultural real estate is designated for residential construction or public interest facilities, it must comply with construction regulations, including the mandatory acquisition of a building permit. This is reinforced by Articles 34 and 35 of Law 90/29 and Article 28 of the Agricultural Guidance Law. (See Article 28)

3.2 Regulatory Controls for Building on Agricultural Lands:

- The legislator has implemented rigorous safeguards around agricultural lands, encompassing a variety of restrictions, controls, and standards that must be considered during construction, tailored to the intended purpose of the structures. The joint ministerial decree dated September 13, 1992, specifies distinctions between constructions for equipment and residential use.

3.2.1 Building Quantity on Agricultural Lands:

- According to the joint ministerial decree dated 13/09/1992, which addresses building rights on lands outside urban zones (The joint ministerial decision dated, 2015), several conditions and controls dictate the construction on agricultural lands:
 - Building permits should only authorize constructions that enhance the general economy of the activity or residential buildings for the person occupying the agricultural lands.
 - The height of such buildings must not exceed 9 meters, measured from any point on the ground, applicable to buildings necessary for high-capacity agricultural facilities, reclaimed desert lands, and pastoral lands.
 - On Alfalfa lands, the building area must not exceed 1/50 of the property area if it is less than five hectares. Beyond this limit, an additional 50 square meters may be added per hectare.
 - For lands with weaker capacities, the building area must not exceed 1/25 of the property area, with the same incremental increase as specified above.

An exception exists for buildings on agricultural lands intended to host equipment facilities as part of agricultural investment projects. Building permits for such constructions are issued following a decision by the Minister of Agriculture, based on recommendations from a special joint ministerial committee.

This committee, whose composition and operation are defined by the Minister of Agriculture, sets specific standards for construction height and area as required by the urban planning and development law. These standards ensure that all intended constructions comply with approved plans and designs, adhere to safety and health standards, and are certified by a qualified architect. A key regulation from the joint ministerial decree mandates that no construction, whether residential or facility-related, may exceed a height of 9 meters.

Reviewing Article 36 of Law 90/25, (Article 36, 1990) it is evident that the law permits the conversion of very fertile or fertile agricultural lands into categories suitable for urban development under strict technical and financial conditions detailed within the legislation. Following such conversions, Article 37 provides for compensation to the state and local communities for any loss in value resulting from these changes. (See Article 37)

3.2.2 Prior Authorization as a Regulatory Mechanism for Building on Agricultural Lands:

The necessity of obtaining a building permit for agricultural lands is underscored by the urban planning and development law, which requires prior authorization in specific scenarios.

3.2.2.1 Obtaining Prior Authorization:

Prior authorization is essential and is typically granted by the designated authorities, particularly the National Office for Agricultural Lands for state-owned properties. (Balkasem Sahi, 2024) This is crucial for ensuring regulatory compliance and is a prerequisite for constructing necessary buildings on these lands. (See Articles 02-03-05)

Exceptions exist for constructions assigned to public bodies under a concession for specific land categories.

2.2.2.3. Consideration of Urban Planning and Development Tools:

To issue a building permit on agricultural lands, several factors must be considered:

1. With Urban Planning Tools:

- A. Authorization may proceed after consultation with the agricultural chamber, especially for constructions in non-urbanizable sectors, ensuring these are defined and proportionate to the land's overall economy. (See Article 23)
- B. Constructions must serve a public utility or be necessary for the optimal exploitation of the lands.

2. Without Urban Planning Tools:

- A. Construction is permissible only within limits suitable for the agricultural viability of the lands. (See Article 04)Renewal of the permit may be necessary for constructions intended for future urbanization areas.

- B. The construction height must be consistent with the rural surroundings, not clashing with the natural landscape. (See Article 06)
- C. Authorization includes constructions and facilities necessary for irrigation, national interest projects, public utilities, or modifications to existing structures.

3.2.2.3. Building Permit

Building permits for agricultural lands categorized as having high or good yield are contingent upon meeting the stringent forms and conditions outlined in legislative provisions related to building and urban development rights.

The granting of a permit requires the submission of an application, which can be delivered either in paper form or via a digital platform provided by the ministry responsible for local communities (See Article 42). The application must include three essential files:

- A. Administrative file.
- B. Architectural file.
- C. Technical file, which must clearly detail the dimensions of the structures and the elements comprising the framework, mandatorily endorsed on appropriately scaled structural designs by the qualified national body for technical supervision, relevant for residential use facilities. (See Article 43)

The procedure for processing a building permit application varies depending on the jurisdiction:

- The procedure for processing a building permit application varies depending on the jurisdiction . (See Article 57)
- If the issuing authority is the delegate wali, the wali, or the minister responsible for urban development, the application is processed at the single window of the wilaya or the administrative district (See Article 49) .

The head of the municipal council forwards the application file, along with the opinion of the municipal urban planning services, in seven copies to the state service responsible for urban planning.

This body is tasked with issuing a conforming opinion within eight days from the date of submission. Additionally, a copy of the file is sent to the advisory services via their representatives at the single window to facilitate a coordinated review process. Decisions on the applications are made within fifteen days.

Conclusion:

Agricultural lands play a crucial role across various sectors, notably in economic terms, as they constitute a vital natural resource intimately connected with human sustenance and community well-being. They are integral to the security and stability of states, safeguarding sovereignty.

Nevertheless, these lands face significant challenges, including encroachments and inappropriate conversions from their intended agricultural purposes. These issues are exacerbated by urban development and construction pressures, often referred to as the "cement invasion", which impinge on the rights of landowners. These rights include constructing buildings for residential, agricultural, or equipment use, all of which are enshrined in law but frequently contested in practice.

Thus, to effectively safeguard agricultural lands and regulate construction on these vital resources, the legislator has implemented stringent legal controls that encompass necessary restrictions and conditions. As a conclusion to this study, we present a series of recommendations aimed at enhancing the protection and sustainable management of agricultural real estate:

- Enact clear and deterrent laws that ensure effective protection of this type of real estate.
- Impose strict penalties for encroachments on agricultural lands, regardless of their type.
- Find solutions to the problems faced by the owners of these lands, whether in terms of exploitation methods, subdivision, or other complex issues present in reality.
- Harmonize the technical classification of agricultural lands where necessary constructions are erected.
- Activate monitoring mechanisms in the field of building on these lands.
- Enact clear laws to avoid the overlap of tasks performed by administrative structures designated to protect agricultural lands.
- Protect agricultural lands from being diverted from their agricultural purpose.

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47. See Article 23 of Law No. 90/29, previously mentioned.
48. See Article 04 of Law No. 90/29, same reference.
49. See Article 06 of Law No. 90/29, same reference.
50. See Article 49 of Law No. 90/29, same reference.

51. See Article 42 of Executive Decree No. 24/247 dated July 23, 2024, amending and supplementing Executive Decree No. 15/19 dated January 25, 2015, which defines the modalities for the preparation and delivery of urban planning contracts, Official Journal No. 51, dated 28/07/2024, p. 22.
52. See Article 43 of the same executive decree.
53. See Article 57 of the same executive decree.
54. See Article 49 of the same executive decree.