

The Dual classification of land between agricultural use and urban planning

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MANSOUR Warda*
University of medea
mansour.warda@univ-medea.dz

MEDJADJI Mansour
University of medea
medjaji.mansour@univ-medea.dz

Abstract:

This research aims to shed light on the various laws and regulations governing the process of converting agricultural land. The Algerian legislator has always sought to preserve agricultural resources by surrounding them with a set of legal

frameworks and regulations. However, the demographic expansion and population boom that the country has witnessed, particularly in recent times, have prompted the legislator to seek alternative solutions, such as the reclassification of agricultural land and its incorporation into areas designated for urban development, through specific legal procedures and conditions.

Keywords: *Converting; Agricultural land; Development; Reclassification*

Introduction:

In recent years, the world has experienced an unprecedented wave of urban expansion driven by a combination of economic and political dynamics, as well as significant demographic shifts marked by substantial population growth. These developments have fueled the notion that urban expansion onto agricultural lands has become a necessary alternative solution to mitigate pressing challenges such as housing shortages and the proliferation of informal, makeshift, and fragile dwellings.

Given the critical importance and strategic value of agricultural real estate within the state, particularly in its role in safeguarding national food security, the legislator sought to establish a framework of special legal protection. From the outset, efforts were directed toward regulating the exploitation of agricultural properties as renewable resources through a series of legislative instruments. Foremost among these is Law No. 90-25 of 18 November 1990, which encompasses the amended and supplemented Real Estate Directive Law, introducing a new classification of real property and defining the technical nature of

* - Corresponding author.

property ownership. This was followed by Law No. 90-29 of 1 December 1990, containing the amended and supplemented provisions on development and reconstruction, and subsequently by Law No. 10-03 of 15 August 2010, which sets forth the conditions and modalities governing the exploitation of agricultural lands belonging to the private domain of the State,⁽¹⁾ as well as the constitutional texts approving the protection of this type of land, which stipulates the following: "The State shall ensure the protection of agricultural lands".⁽²⁾

- Importance of the study: In light of the contemporary transformations the country is undergoing-whether economic or demographic-which have created increasing pressure on real estate infrastructures, and with the growing need to expand the urban fabric at the expense of agricultural lands in order to accommodate the rising demand for housing, the Algerian legislator has not only sought to devise appropriate solutions but has also established a carefully structured plan to manage this targeted transfer of agricultural land. This regulatory approach and tightening of expansion mechanisms aims, on the one hand, to impose a degree of rigor and control, and on the other hand, to safeguard agricultural lands from arbitrary conversions that undermine their technical and productive value.

Accordingly, this study seeks to elucidate the classification of agricultural lands as well as the conditions and procedures governing their conversion into lands designated for reconstruction.

- The Problem of the Study: Did the legal mechanisms created by the Algerian legislature regarding the conversion of agricultural lands and their inclusion in the urban sector have been sufficient to achieve a balance between the right to urban expansion and the protection of agricultural property?

Referring to the subject of the study, we have relied in our study on this topic on the descriptive-analytical method, through the analysis of the legal texts adopted in the mechanism of the transfer of agricultural lands in Algeria. From this rostrum, we will highlight the various legislative texts regulating the process of transferring agricultural lands through the following division: First axis: Land Classifications in Algeria The second axis: the transformation of agricultural lands and their annexation to the urban sector.



Chapter I: Classification of Urban Sectors

The Algerian legislature has set specific criteria for the classification of the total agricultural land in Algeria, and accordingly, in this axis, we will address the classification of agricultural lands and the classification of construction sectors.

First: Classifications of agricultural lands.

According to the definition provided in Law 90-25, agricultural land is characterized as a category of land capable of producing goods suitable for human and animal consumption, or materials that can be directly manufactured or transformed. Such production is contingent upon human intervention, whether carried out on an annual basis or over several years. Within this framework, Law 90-25, in Article 04, establishes specific definitions for all categories of real estate, including agricultural lands. It dedicates Articles 04 through 10 to addressing the various forms of agricultural land, which include the following types:

1. Very fertile agricultural land, which is the type of land that is characterized by high production capacity, where the land is deep in it, the soil is good, and it is irrigated or irrigable.

2. Fertile agricultural lands, which are classified into two categories: the first consists of medium-depth soils that are either irrigated or capable of being irrigated; the second consists of deep, non-irrigated soils situated in humid or semi-humid regions and characterized by the absence of topographical constraints.

3. Medium-fertile agricultural lands, which in turn are divided into four types:

- Lands that are irrigated with medium topographical obstacles and depth.

- Unirrigated lands contain moderate topographical obstacles, but in terms of depth, the percentage of rainfall in them is stable and variable.

- Unirrigated lands contain medium depth without topographical obstacles, with change In the percentage of rainfall - Unirrigated lands with medium depth without topographical obstacles, with a difference in the percentage of rainfall between medium and high.

4. Poorly fertile agricultural lands: This category refers to lands characterized by significant topographical constraints, as well as limitations related to rainfall levels, soil depth, erosion, structural

composition, and salinity.

In addition to the technical classification of agricultural lands, Executive Decree No. 12-124 of March 19, 2012 provides a definition of areas with agricultural potential, dividing them into four (04) distinct sections, namely ⁽³⁾

Zone A: *It includes the plains lands located in the coastal and semi-coastal areas where the rainfall is greater than or equal to 600 mm.*

Zone B: *It includes the plains lands where the rainfall is between 450 and 600 mm.*

Area C: *It includes plains lands where the rainfall rate is between 350 and 450 mm.*

Zone D: *It includes all agricultural lands, regardless of their location, with rainfall of less than 350 mm.*

Second: Classification of Urban Sectors

Law 90-25, which includes the Real Estate Directive, defines rich lands and rebuildable lands, and rich land is any plot of land in which there is a community of buildings in their various fields and activities, whether they are unutilized or unbuilt.⁽⁴⁾

Article (21) of the same law further defines renewable lands as plots designated for reconstruction within specific timeframes through the use of development and reconstruction instruments. From the provisions of the aforementioned articles, it becomes evident that the legislator has established a classification for the sectors programmed for reconstruction, relying on reconstruction instruments commonly referred to as the reconstruction plan.

1. Preparation and reconstruction tools

Article (10) of Law 90-29 stipulates the tools of reconstruction, namely the Directive Plan for Preparation and Reconstruction, and the Land Occupancy Plan.

A. Guideline for Preparation and Reconstruction (PDAU)

The Guideline for Urbanization and Development plan (PDAU) is defined as "a spatial planning and urban management instrument that establishes the fundamental guidelines for the urban development of the municipality or group of municipalities concerned. It takes into account development schemes and planning strategies, and provides the

reference framework for the land occupancy plan.”⁽⁵⁾, embodied in a system supported by a guidance report and a set of reference graphic documents.⁽⁶⁾” From this definition, it can be concluded that a master plan serves as a tool to guide the planning of a specific area encompassing one or more municipalities. It takes into consideration the spatial layout designs, including the placement of buildings, the methodologies employed in their development, and all details pertaining to infrastructure, roads, utility networks, and the boundaries delineating the municipalities.

B. Land Occupancy Plan (POS)

The Algerian legislator did not provide a formal definition of the Land Use Plan (POS), but instead outlined a set of objectives it aims to achieve. As stated in Article 31 of the Law on Rehabilitation and Reconstruction: “The rights to use land and construct buildings shall be defined in detail within the framework of the directives of the Directive Plan for Development and Reconstruction...” From this provision, it can be inferred that the Directive Plan for Preparation and Reconstruction serves as a tool for determining the urban configuration of each area, whether encompassing the entire territory of a municipality or only a part of it. The plan specifies in detail how land use operations are organized and implemented, the methodologies for construction, the standards and criteria governing building practices, as well as the procedures for distributing roads and easements across the different municipal zones.⁽⁷⁾

2. Sectors programmed for reconstruction

The Algerian legislature established a classification of sectors designated for reconstruction in Articles 19 to 29 of the Law on Development and Reconstruction, dividing them into four (04) distinct sectors, which can be outlined as follows:⁽⁸⁾

a. Durable sectors are those designated from the outset for construction, regardless of whether they have already been developed or are prepared for occupancy. This category also encompasses areas that have not been renovated and that require various repairs and the provision of necessary infrastructure.⁽⁹⁾

b. Sectors programmed for reconstruction are those designated for development within the short to medium term, typically spanning a

period of up to ten years. It is noteworthy that certain agricultural lands may be allocated for construction purposes, particularly for public projects such as schools and hospitals.

c. Future construction sectors, which are allocated for the long term in the horizon of 20 years, i.e., construction in them is currently prohibited because they are subject to a non-construction agreement, and all of this remains subject to the reconstruction plans.

d. Non-redeemable sectors, including agricultural lands and environmental reserves, are areas on which construction is generally prohibited and are classified as non-recyclable sectors. However, in exceptional circumstances and considering the broader economic context, a building permit may be granted on such lands in accordance with the applicable legal and regulatory provisions, while fully observing the stipulations set forth by the law.

Chapter II: The Transformation of Agricultural Lands and their Annexation to the Urban Sector

Law No. 90-25 on the Real Estate Directive and Law No. 08-16 on the Agricultural Directive provide for the transformation of agricultural lands into renewable lands, regardless of the nature of the land, whether it is very fertile, fertile, medium fertile or weak.⁽¹⁰⁾

Before proceeding to study the procedures for the conversion of agricultural lands, we must address the distinction between agricultural lands belonging to national properties that may not be disposed of because of their agricultural nature until their classification is revoked, as opposed to private national properties that may be disposed of.⁽¹¹⁾ From this point of view, we will touch on the types of agricultural property.

First: Types of Agricultural property

Referring to the legal texts, the Algerian legislature divided agricultural property into three categories:

1. Agricultural lands belonging to private state property

The Algerian legislature regulates national property through Law No. 90-30 of 1 December 1990, which contains the amended and supplemented National Property Law. With reference to the provisions of Article 18 of Law No. 90-30, which specifically defines the composition of the private national property owned by the State, paragraph 11 identifies the following:



Agricultural or agriculture-oriented lands, and pastoral lands that are the property of the State.⁽¹²⁾ Accordingly, through the text of the article, agricultural lands are included by the legislature in the enumeration of private national properties belonging to the State only.

2. Agricultural lands belonging to the private sector.

Article 674 of the Civil Code defines property in general as the right to enjoy and dispose of real property⁽¹³⁾, and with the promulgation of Law No. 90-25 of November 18, 1990 in article 27 thereof, it did not violate the text of the Civil Code in terms of enjoyment and disposal, but defined it according to its nature or purpose⁽¹⁴⁾. Agricultural lands and lands with an agricultural orientation, being part of the technical domain of real estate, are therefore subject to the general rules of ownership. However, agricultural lands are distinguished by the obligation of the owner to utilize them productively. Any violation of this obligation or any alteration of their designated purpose renders the owner legally accountable, as stipulated in the Real Estate Directive Law.

3. Agricultural Lands Endowment

The Algerian Family Code defined provided a definition of endowment; however, the formal recognition of endowment property emerged under the 1989 Constitution, which acknowledged the tripartite structure of real estate ownership. This recognition was further reinforced by Law 90-25, which established endowment property as a distinct category separate from other types of real estate. Subsequently, with the promulgation of the Waqf Law No. 91-10 on 27 April 1991, the provisions governing endowments were amended and supplemented.⁽¹⁵⁾ Article 3 of the law defines endowment as follows: "A waqf is the perpetual withholding of property from ownership for the purpose of charity, benefiting the poor or serving some form of charitable and benevolent purpose."

The exploitation of waqf agricultural lands is governed by Executive Decree No. 14-70 of 10 February 2014, which sets out the terms and conditions for leasing waqf agricultural lands designated for agricultural use.⁽¹⁶⁾

Second: Changing the Agricultural Character of Agricultural Lands:

Referring to several factors, the conversion of agricultural lands varies according to its types, and this is what we will try to clarify through the following:

1. Agricultural lands classified as very fertile or fertile

Referring to the relevant legal texts, any conversion of land classified as very fertile or fertile necessitates the issuance of a legislative act that precisely determines the scope and conditions of the conversion process. Regarding the procedures and mechanisms of transfer, they are governed in accordance with the legislation in force within the same framework, as well as in relation to other land categories. It should be noted that, upon examining the provisions of Article 21 of the same Law-which defines redeemable lands as the totality of plots scheduled for reconstruction within specific time periods through designated development and reconstruction instruments-an inconsistency becomes apparent between the texts of Articles 36 and 21. Article 36 attributes the process of converting agricultural lands into renewable lands to the provisions stipulated by law, whereas Article 21 assigns this conversion to the instruments of development and reconstruction.

In light of the foregoing, it can be concluded that the transfer process is subject to a licensing requirement grounded in statutory provisions, followed by regulatory oversight in addition to technical and financial constraints.⁽¹⁷⁾

2. Agricultural lands with medium and weak fertility.

The Real Estate Directive Law stipulates that other types of agricultural lands are subject to the modalities of conversion through regulation⁽¹⁸⁾, and this is what the Algerian legislator stated in the Agricultural Directive Law, where, in addition to issuing a legislative text, the transfer must be by virtue of a decree adopted by the Council of Ministers,⁽¹⁹⁾ with the obligation to determine the value of compensation for the lack of excess value for the benefit of the state and local communities.⁽²⁰⁾

third: Procedures for the conversion of agricultural lands:

The process of converting agricultural lands has been accompanied by numerous legal instruments, beginning with the aforementioned Law 90-25, which authorized the conversion of agricultural land. This was followed by a series of regulatory measures governing the procedures related to the transfer of such lands. Within this framework, Ministerial Circular No. 553 of November 11, 2009 was issued, outlining the procedures for the conversion and the cancellation of the agricultural classification of lands intended to be used as real estate parcels for the implementation of development and public equipment projects.⁽²¹⁾ by establishing a state committee responsible for examining and assessing requests submitted by various sectors for the cancellation of the agricultural classification of real estate parcels, while taking into consideration the technical and economic criteria set forth in the circular.⁽²²⁾

-Instruction No. 012761 of 22 December 2009 was also issued regarding the conversion or cancellation of the classification of agricultural lands designated for use as parcels intended for the implementation of development projects. This instruction mandates the establishment of a state committee comprising the various authorities involved in the process, including the services responsible for state property. These entities are required to conduct all necessary investigations and compile all relevant documents and information pertaining to the properties subject to conversion. Once completed, the file is to be submitted to the state committee, accompanied by the development project intended to be carried out.⁽²³⁾ Referring to Instruction No. 01601 of 22 February 2010, which stated that the operations that would classify or declassify must be carried out by the competent authority in advance, in-depth and scrutinized on the legal nature of the property that is the subject of the transaction, highlighting the origin of ownership and the current course.

- 1. Detailed report signed by the concerned party*
- 2. Request and opinion of the entity concerned with one of the mentioned operations*
- 3. Topographic plan or measurement document if the property is surveyed.*
- 4. A property evaluation and descriptive report, not exceeding six*

months.

Any useful document or information can also be added to complete these processes more successfully.⁽²⁴⁾

Within the framework of reinforcing the conversion process, the Prime Minister issued Directive No. 001 dated 19 April 2010, which stipulated that portions of agricultural land should be deducted in order to meet the identified needs.⁽²⁵⁾

Pursuant to it, an inter-ministerial committee was established under the chairmanship of the Prime Minister to present to it a set of reports and recommendations of the state technical committees and a joint sectoral technical committee at the state level.

- The governor or his representative as the chairman of the committee

- Director of Agricultural Interests

- Director of Construction and Construction

- Director of State Properties

- A representative of the sector that submitted the project

The memorandum also outlined the components of the file pertaining to the deduction of agricultural lands for the implementation of development projects at the state level, and this file is composed of the following documents⁽²⁶⁾:

- Request the completion of the project from the concerned sector and clarify the case of necessity for doing so.

- A copy of the decision of the Guideline Plan for Development and Reconstruction approved by the Authority.

- The decision to register the project.

-Reference and standard related to determining the area of land necessary for the establishment of the project.

- Plot Identification Plan

- A submission report concerning ownership, including an explanation of the reasons for selecting this specific category of land. The file is then transmitted to the Ministry of Agriculture and Rural Development, which subsequently submits it to the aforementioned joint ministerial committee. After examining the file, this committee issues decisions either approving the deduction of agricultural lands or rejecting the request if it is deemed unjustified. The Prime Minister then

communicates these decisions to the relevant ministers and governors for implementation. It should also be noted that these decisions are later formalized by a decree issued by the Council of Ministers.

Instruction No. 002 dated May 12, 2013 was issued specifically to ease the procedures related to the transfer of agricultural lands⁽²⁷⁾, and it also stipulated that the governors should be granted real estate vessels of an agricultural nature to complete projects when necessary as an exception.⁽²⁸⁾

Despite the issuance of two instructions concerning the deduction of agricultural lands, numerous violations have nevertheless occurred, as large areas of agricultural land were removed under the pretext of fulfilling needs related to public projects. In response to these irregularities, the Prime Minister issued Instruction No. 003 dated 27 May 2018, which amended the two previously mentioned instructions. This new instruction reiterated the content of the earlier directives and highlighted the abuses that had taken place, thereby making it necessary to adopt a set of measures, which are as follows:⁽²⁹⁾ 1. The cancellation of the classification of highly fertile and fertile agricultural lands, as well as the lands owned by agricultural investors, is prohibited, except in instances of necessity that have received prior approval from the Joint Ministerial Committee. 2. Regarding the remaining classifications of agricultural lands, they shall be subject to on-site evaluation by the joint sectoral state committee, which is responsible for preparing a comprehensive report on the characteristics of the land and making recommendations accordingly. Following the approval of these recommendations by the ministerial committee, the decisions shall be implemented once they are formally adopted by the Council of Ministers.

3. Any additional measures concerning the deduction of agricultural lands are likewise prohibited unless enacted through a formal decree issued by the state governor.

Conclusion:

The current conditions prevailing in the urban sphere, along with the fluctuations resulting from the irrational management of real estate assets and the longstanding regional disparities, have collectively driven the search for intermediate solutions. One such response has been the tendency to expand onto agricultural lands and convert them

into urbanized areas in an attempt to restore a degree of stability. However, this approach has proven far from optimal, as it has effectively created a pretext for encroaching upon agricultural property-land that constitutes a fundamental resource for development and investment. Consequently, the legislator was compelled to devise alternative mechanisms to ensure the protection of agricultural property. This has involved, on one hand, the orientation toward new land-use plans that prioritize the development of other types of land. The contemporary challenge therefore lies not merely in regulating the conversion of agricultural land, but rather in formulating a strategic urban vision capable of drawing clear boundaries between areas that must remain dedicated to agricultural activity and those that may legitimately be allocated for long-term urban development.

*Through this study, we reached a set of **results**, the most important of which are:*

- The absence of effective planning and coordination between professionals in the agricultural sector and those working in the field of construction.*

- Random and ill-considered decisions aimed at finding temporary solutions without looking for systematic strategies that balance resource protection with accommodating urban growth.*

- The practical shortcomings in regulating the processes of deducting agricultural lands, coupled with the prevalence of violations across the majority of municipalities and provinces, inevitably contribute to a profound disruption in the equilibrium between urban expansion and agricultural preservation.*

*Among the **proposals reached** are:*

- A reassessment of reconstruction plans, including the Directive Plan for Preparation and Reconstruction and the Land Occupancy Plan, along with the incorporation of recent modifications to these instruments.*

- Expansion at the expense of the south and encouraging the establishment of housing on desert lands by providing facilities to citizens in order to obtain building permits for this type of land. - Activating the construction laws, specifically with regard to the control of unlicensed projects and the initiation of demolition on any unauthorized project or building. -Formulating a land-deduction*

strategy that aligns with the development plans of the municipality, the province, and the state, on the condition that experts in construction, architecture, and housing are actively involved in its preparation.

- Restricting urban expansion at the expense of agricultural lands by enacting stringent legal provisions that prohibit any transfer, alteration, or annulment of the agricultural classification of such lands.

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