



# The importance of creating new inheritance policies and laws that reduce agricultural land fragmentation and its negative impacts in Turkey



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## ABSTRACT

Turkey faces a problem that is encountered in emerging economies across the world. The small size of parcels and their scattered nature that are the product of existing inheritance systems are incompatible with the new technologies available. The resulting higher production, transport and marketing costs in Turkey mean that it is not competitive with its trading partners. The Turkish government has proposed a series of changes in how inheritance rights are to be managed in a program of land consolidation and reorganization. Such changes would have a major impact on the rural economy and could elicit strong cultural and political reactions.

This study analyses the views of agricultural stakeholders to these proposed legal changes to prevent further fragmentation of agricultural land. The research was designed to predict impact rather than create policy. The interviewed stakeholders were separated into two groups; Those “in favor of the solution” and those “opposed to the solution” by a two-step cluster analysis, taking into account the social and economic characteristics of the stakeholders as well as the region where the study was conducted. It was determined that their economic concerns are the primary obstacle to creating effective policy. Education, social security, living place, tradition, and experience in the implementation of the policy were identified as other influential factors.

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## 1. Introduction

In Turkey about 30% of its population lives in villages or towns and about 25% of the workforce is employed in agriculture (TSI, 2013a, b). Rural populations and agriculture are given special attention in development plans because of its national importance. The success of official development plans depends on eliminating income differences between rural and urban areas as well as being sustainably and environmentally balanced.

As a result agricultural plans are increasingly environmentally focused, where the primary technical interest is in soil conservation, pollution revention, land consolidation, and legal regulations to prevent land degradation. However, field structure, that is the

shape, size and location of plots and where they are in relation to the agricultural population is an obstacle to achieving stated development goals.

The fact that a significant part of the growing population of Turkey is employed in the agricultural sector creates intense pressure on the land, which exacerbates the fragmentation problem (Gün, 2011). “Agricultural land fragmentation can be described as land belonging to a single farming enterprise that is divided into a large number of parcels located in different places” (Ministry of Development, 2012).

Land fragmentation causes an imbalance between land and human relationships as well as a reduction in productivity. It happens as a result of the following factors: (Anon, 2013):

- 1) Inheritance and property transfer,
- 2) Joint ownership and split sales,
- 3) Renting and sharecropping that stem from lack of capital and labor,

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#### 4) Miscellaneous factors (highway, railway, water channel, etc.) through public projects.

For these reasons, the amount of land cultivated by the average agricultural enterprise is shrinking and parcels are farther apart. As a consequence, farmers are failing to achieve increases in production because they cannot establish modern farm business practices on such fragmented parcels (Türkseven and Yavuz, 2008; Ekinci and Sayılı, 2010). Furthermore, irrigating such lands is expensive and inefficient (Yağanoğlu et al., 2000; Eser and Uçar, 2012).

National and international studies on land fragmentation are a point of contention among researchers. Some suggest that there are advantages, especially for risk management due to pests and variability in the weather. Production in different ecosystems also provides the opportunity to grow different crops that mature at different times. This lets producers rotate their labor to different parcels at different seasons (Bentley, 1987; Dijk, 2003; Wu et al., 2005).

However, most evidence suggests that fragmentation limits agricultural development, especially where the small scattered parcels are within the same general micro ecological zone. The negative effects are mostly in the inefficient allocation of labor and capital (Shuhao, 2005) which results in unused land and difficulties in modernization (Mcpherson, 1983; Simpson, 1987; Blaikie and Sadeque, 2000; Wan and Cheng, 2001). With falling agricultural and rural incomes, social problems are also a concern (Dijk, 2003).

A strong indicator of fragmentation is the average number of parcels per farm in Turkey. According to the General Census of Agriculture 2001, there was an average of 4.1 parcels per farm and the average parcel size was 1.5 ha. However, the data from the Farmer Registration System and Direct Income Support, which is one of the components of the Agricultural Reform Implementation Project, indicates that in 2002 there were 5.9 parcels per farm. Notably, this number increased significantly to 6.9 parcels in 2011 and the size of the agricultural holdings was 6.81 ha (TSI, 2004). Conversely, when we look at the scale of total farm size, we see a general decrease from the 1950s (average of 7.7 ha) to the 2000s (6.1 ha). In 2011, this increased to 6.8 ha primarily due to social agricultural policies, in particular consolidation activities (TSI, 2004; MFAL, 2013a). In Turkey, land consolidation studies were initiated in 1961. Between 1961–2002, a span of 41 years, land consolidation was carried out for 450,000 ha. Notably, this number increased to approximately 3 million hectares by the end of 2012. Currently, land consolidation efforts are ongoing in another 2 million hectares (MFAL, 2013a).

## 2. Land reform: change in the current legal situation

In Turkish agricultural law, ownership of agricultural land is subject to the general provisions relating to immovable property pursuant to the Turkish Civil Code (TCC). However, some specific legal regulations relating to agricultural land ownership are in the Law of Land Conservation and Use, No. 5403, which has brought significant improvements (Official Gazette, 2005).

The current provisions of the TCC on inheritances require that land be equally shared among all heirs, which creates a problem because co-owners (heirs) that emerge after the division can demand allotments at any time. Since the adoption of TCC No. 743 in 1926 (based on the Swedish Civil Code), agricultural lands have been consistently divided by inheritance (Zevkiler et al., 1970). TCC No. 4721 (22 November 2001) blocks partial breakup of agriculture lands, which was done in order to reduce fragmentation and to increase average plot size (TCC, Article: 659–668). According to these provisions, any agricultural undertaking within the estate (i.e., farming enterprise) with economic integrity and suf-

**Table 1**  
Indivisible plot sizes according to law no. 5403.

Land Types	Indivisible Plot Size (ha)
Marginal Agricultural Lands	2
Absolute Farm Lands	2
Special Product Lands	2
Agricultural Lands Under Planted Trees	0.5
Agricultural Lands devoted to Greenhouse Farming	0.3

Source: (Official Gazette, 2005).

ficient agricultural assets can be allocated as a whole to the most competent requesting heir (Başpınar, 2006). Additionally, the principles that determine economic integrity and sufficient agricultural assets were adopted when regulations were created in 2003 (Official Gazette, 2003).

The arrangements were introduced to prevent fragmentation when an heir requests that his or her share of land be separated. Therefore, there is no opportunity to implement these provisions unless there is a request made by one of the heirs to allocate their own agricultural enterprise. However, in such a case, each of the heirs has the right to demand the sale of the entire enterprise (Kılıç, 2010).

The fact that the arrangements are optional in the TCC does not mean that the agricultural enterprise cannot be fragmented even if no request is made by any of the heirs. Therefore, specific regulations were made in the Law of Conservation and Use of Land No. 5403 in order to prevent fragmentation of agricultural lands. In Article 8 of Law 5403, agricultural activities will be determined by considering the parcel size necessary for the proposed agricultural activity as well as the social, economic, ecological and technical particularities of the region. Also the law stipulates a minimal size for an agricultural property to be entered in the land registry. The minimum qualifying land sizes are given in Table 1.

Unfortunately, these legal changes are insufficient to prevent the continued fragmentation of agricultural lands and therefore additional changes to the Law of Conservation and Use of Land are necessary, specifically to the inheritance provisions of the TCC. A study of how this problem has been addressed elsewhere Turkey has found that the legal concept of *translatio dominii* could be a possible policy intervention. Under *translatio dominii* an on-going agricultural enterprise and its agricultural lands are allocated to a specific inheritor.

Consequently, three different proposals have recently been submitted for the *translatio dominii* of agricultural lands. They propose changes to the Law of Conservation and Use of Land and the inheritance provisions of the TCC. Pursuant to the pending draft law sent to the TBMM (Presidency of the Grand National Assembly of Turkey) on 30 May 2013, agricultural enterprises and agricultural lands would be considered within the scope of one of the three subjects submitted below. These are (TBMM, 2013):

- 1) The *translatio dominii* of inheritors' agricultural enterprise or land to a single inheritor,
- 2) The *translatio dominii* of inheritors' agricultural enterprise or land as communally-owned property, as defined in the TCC, or
- 3) The *translatio dominii* of an inheritor's agricultural enterprise or land to a corporation that they establish under terms in the TCC.

Agricultural enterprise, minimum size of agricultural plot, and subsidiary operation are defined in the draft. The minimum size of agricultural enterprises and the minimum area for agricultural activity shall be determined legally by the MFAL by taking into account regional differences in factors such as crop species, regional agricultural assets, and activity. The plan is to prevent agricultural enterprises from engaging in activities that are too small to be

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