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Creation of Land Markets in Transition Countries: Implications for the Institutions of Land Administration

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CREATION OF LAND MARKETS IN TRANSITION COUNTRIES: IMPLICATIONS FOR THE INSTITUTIONS OF LAND ADMINISTRATION

by

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“Dr. Lionel Gift, distinguished professor of economics, was, as everyone including Dr. Gift himself agreed, a deeply principled man. His first principle was that all men, not excluding himself, had an insatiable desire for consumer goods....”[Jane Smiley, *Moo* (New York: Faucett Columbine, 1995), p. 31]

“Note: In our mountains, it almost never happens that any land...is sold outside the village. If the cousins, clan and neighbors make no effort to buy the land..., it is sold and resold within the village, in order to prevent an outsider from buying it and entering the community.” [Shtejefën Gjeçov, *The Code of Lekë Dukagjini* (New York: Gjonlekaj Publishing Company, 1989), p. 104]

1. INTRODUCTION

A massive transformation of land management is occurring worldwide from being located in institutions for “public” decision making to a substantially greater degree of “privatization” of land management. The moving force behind privatization of land management (defined as decision making about how land¹ is used) is the political-economic decision to establish dynamic market economies.² Markets in land linked to markets in capital and labor are central to market

¹ The term “land” in this paper refers to a piece of the surface of the earth, and any permanent structures attached to it. Mostly equivalent concepts include “immovable property” and “real estate.” Graaskamp defines the latter term as “artificially delineated space with a fourth dimension of time referenced to a fixed point on the face of the earth” (Jarchow 1991, p. 42).

² The World Bank’s World Development Report 1996, “From Plan to Market,” describes the transition of countries from centrally planned economies to economies with market orientation, a transition which affects about one-third of the world’s population.

economies. Land markets in market economies decide who has access to land and how the land is used, instead of the planned political economy's institutions which has exercised these functions for decades. As the management of land becomes privatized, the institutions of land administration (understood as the processes of recording and disseminating information about ownership, use, and value of land³) must also change radically.

The increasing importance of private control over the land is particularly dramatic in the ex-socialist countries of Eastern Europe and the former Soviet Union. The institutions of land administration are similarly in more or less dramatic transition in these countries. The institutional transition involves the privatization of state land administration agencies, the redefinition of functions of public agencies to respond to the needs of private managers of land, and the creation of new institutions to administer the private and public interests in land in a market economy context.

This paper describes (1) the processes of privatization of land management in selected transition countries and (2) the post-privatization changes in land administration institutions which are being crafted to establish land markets. We begin with the proposition that there are similar land market institutional problems which most "transition" countries are facing, due largely to common experiences in creating command economies during the past 50–80 years and the almost simultaneous decisions of these countries to move toward market political economies in the late 1980s and early 1990s. Each country has had unique historical experiences, but we propose that there is enough similar institutional history among the transition countries to venture into comparative analysis.

In this regard, we present the Albanian experience with land market institutional development as being potentially relevant to experiences in other transition countries of Europe and the former Soviet Union. The broad question is, how can countries construct the institutions of immovable property markets once they have made the political-economic decision to "go market"?

2. PRIVATIZATION

The first programmatic question is whether and how extensively to create marketable private rights in land. The creation and expansion of private property rights involves a clear commitment to transfer at least two central rights of ownership from the state to private property owners:

- (1) the right of the private owner to the continuous and exclusive use and enjoyment of the property, and
- (2) the right to transfer some or all rights through private contracts (such as sales, leases, inheritances) to other persons.

These transfers are commonly referred to as land, real estate, or immovable property market transactions, and include sales, leases, gifts, and inheritances.⁴

³ This definition is used by United Nations Economic Commission for Europe (UNECE 1996, p. 6).

⁴ Rights to privately owned land which the state may retain in western capitalist countries include: (1) the right to acquire private immovable property for public purposes; (2) the right to acquire ownership when the private owner dies and has no heirs; (3) the taxation of the owners of private property; (4) the right to forbid private owners to build

The most common meaning of privatization in the transition countries has been the transfer of the right of exclusive use of land from state enterprises to individuals, families, and companies. This exclusive use may be conditional, such as in Albania where the law states that people who receive use rights to agricultural land and who do not in fact use it within one year of the transfer of ownership, lose the right.⁵ Another example of this type of privatization is Kyrgyzstan, where the lifetime, inheritable use right is conditioned on the proper use of the land.⁶

The State's granting to people the right to hold, use and enjoy a specific piece of land can have powerful social, political and economic effects, as attested to in previous historical experiences, such as the creation of freeholders in the Americas:

The instant I enter on my own land, the bright idea of property, of exclusive right, of independence, exalt my mind. Precious soil, I say to myself, by what singular custom of law is it that thou wast made to constitute the riches of the freeholder? What should we American farmers be without the distinct possession of that soil? No wonder we should thus cherish its possession; no wonder that so many Europeans who have never been able to say that such portion of land was theirs cross the Atlantic to realize that happiness. This formerly rude soil has established all our rights; on it is founded our rank, our freedom, our power as citizens, our importance as inhabitants of such a district (de Crevecoeur 1963, p. 48).

Despite these theoretical and political arguments in favor of the privatization of management, the creation of private ownership rights has been erratic in the transition countries. There are, quite commonly, many restrictions on transaction rights:

on certain immovable property; (5) the right to deprive private owners of certain uses of the immovable property, such as the application of toxic pesticides or the creation of a rubbish dump; (6) the expropriation of private owners who do not use the property to satisfy legally defined social functions. The variability in the meaning of private ownership across cultures is discussed in Place and Roth (1992).

⁵ Law on Land, 19 July 1991, states in Article 15, "Any juridical or physical person to whom land is given for use and who does not use it for agriculture or raising livestock within one year is deprived of the right to use the land."

⁶ According to the Law on Peasant Farms (1991) use rights on a parcel allocated to a peasant farm may be terminated under a variety of conditions, such as if land is used for purposes unrelated to agricultural production [Article 18 (b)]; or if land is not used for agricultural production for a period of one year providing that no capital improvement on land is required, and a period of three years in cases where capital improvements are necessary for land-use [Article 18 (e)]; or for the irrational use of a land parcel, causing its productivity to fall below the average (as determined by cadastral evaluation) [Article 18 (g)]. The right to transfer use rights to another person is ambiguous. Rasmussen (1996a) states: "Purchase and sale of a physical parcel of land, in essence the transfer of a State Akt, is more complicated. It is not even clear in the existing legislation whether this is legal, however there are provisions for transfer of these parcels in the draft Land Code. Officials at *Kyrgyzgiprozem* argue that sale of such parcels is permitted, and that the transaction occurs on the initiative of the parties involved. A State Akt however cannot be sold without the approval and signatures of all those contributing land shares to the enterprise. The procedure for such a sale is unclear, largely because such a sale is not known to have happened in Kyrgyzstan. Further, it is quite possible that such a sale also requires approval of the head of the local administration.

- ♦ In Albania, agricultural land was assigned in ownership to village families by the Land Commissions during 1991–1993, but the right to sell was illegal until 1995, and in practice there is still no legal procedure for land sales.⁷
- ♦ In Romania, some of the ex-cooperative lands which have been privatized through the 1991 Law 18 (5 million farms, 23 million parcels, 8 million hectares) cannot be sold for 10 years and another portion is subject to the right of the proposed Agency for Rural Development and Planning (ARDP) to pre-empt any proposed sale and under certain circumstances oblige the seller to sell the land to the ARDP (Stanfield 1996).
- ♦ In Bulgaria, state enterprises have privatized land through leases, thus giving the lessee the right to use the land and keep the profits generated, but not full transfer rights (Kopeva, Jackson, and Howe 1994).
- ♦ In many of the former Soviet Union (FSU) countries, rights to agricultural land are transferred from the state to private holders as lifetime inheritable usufruct. If a family no longer wants to use the land, the state re-acquires the land for assigning to another user. In some countries the law has been modified to allow the holders of these tenures to transfer them, although with some approval requirements, and to limit the right of use to 49 or 99 years, rather than for life (Kazakhstan 1995; Stanfield 1993; and Rasmussen 1996b).
- ♦ In yet other FSU countries, such as Dagestan and Kazakhstan, the emphasis has been on privatization through the issuance of shares in enterprises or the re-organization of collectives into smaller albeit new forms of corporate or cooperative ownership, rather than the extensive allocation of specific pieces of land to private holders, even as lifetime, inheritable usufructs. Nonetheless, some parcel privatization has occurred in these more cautious countries in the form of usufruct rights to land for specific building sites or dachas (Stanfield 1998, 1993).
- ♦ Restitution of land to previous owners has been a common strategy in Eastern Europe, with some limitations on the amount of land restituted. In some countries physical pieces of land have not been restituted, but rather shares in the collective enterprises have been provided to the ex-owners or compensation in some other form (Bojnec 1995).

3. INSTITUTIONAL CHALLENGES OF PRIVATIZATION FOR LAND ADMINISTRATION

The privatization of rights to use land without including the right to transfer produces a need for land administration systems which record the use rights granted and provides for adequate supervisory public agencies to monitor use and take disciplinary measures when uses are not in conformity with law, a subject for another paper. The more difficult task comes with the subsequent granting of transfer rights as well as use rights. Many transition countries are moving from the privatization of use rights toward more ample privatization, that is, the re-definition of

⁷ See Stanfield and Kukeli (1995); Law 7501 (1991); and Law on Buying and Selling of Agricultural Land, Pastures, Forests (1995).

the rights of the private holders of land to include the right to transfer their properties to other persons.⁸

The push to extend the notion of private ownership of land and other assets to mean both the private right to the exclusive use of land as well as the private right to transfer ownership in transition countries can, in theory, have important psychological and economic benefits:

- (1) when people are private owners, secure in their rights and secure in their expectation to reap the benefits of their work and investments including the expectation of being able to sell their properties if they decide to do so, they invest in their properties, and they can convince lenders to provide them capital to make such investments;⁹
- (2) private ownership focuses attention of the owners on finding the most profitable uses of their properties, yielding higher economic output from better management¹⁰ in comparison with state ownership models.

Again, however, the gap between theory and practice can be large. The transition to private ownership and market economies and the drive to achieve these glowing goals can have their gloomy aspects, if steps are not taken to avoid some dark corners.

3.1 FRAGMENTATION

Privatization means the division of public property into many private units, which can reduce the economies of scale achieved with larger enterprises. Rapid technological shifts compatible with smaller scale economic organization are necessary as well as new forms of cooperation among these smaller scale economic organizations.¹¹

3.2 ENVIRONMENTAL DEGRADATION

The shift to private ownership of the land can produce negative environmental effects. The prevailing view of public ownership of land is largely negative, state ownership being an identifying feature of the rejected, previous regime. This negative view leads people to trash the land remaining in public ownership. The country's leaders will also tend to be at best against investments in public sector activities and at worst in favor of the active externalization of the costs of private enterprise without anyone or any agency picking up those costs.¹² Moreover, the newly private owners of formerly public properties in a context of increasing economic and

⁸The case of Kyrgyzstan is instructive in this regard. Until the approval of the new land code, the right of transfer rights over physical pieces of agricultural land was at best unclear. With the approval of this new code, such rights are expressly validated. See Rasmussen (1996b). Of course, the Russian case is also instructive, but the recent decisions to allow transfers have been issued from the Office of the President and have not been debated or approved by the Parliament.

⁹ See Dale and McLaughlin (1989), chapters 2 and 9; and Larsson (1991, pp. 11–12), and chapter 6 for the benefits of cadastral and land registration systems.

¹⁰ There is a large literature which make these arguments, summarized by Carter, Feder, and Roth (1995).

¹¹ See Lusho and Papa (1998) for an example from Albania..

¹² For a description of the environmental problems of Albania, see Albania (n.d.). For the environmental situation in former Soviet Union countries, see Libert (1996).

political crisis may decide that making long-term investments in their newly acquired properties is too risky, and will opt for extraction of immediate profit, leading to the over-exploitation of their assets and a spiraling downward of the productive and natural resource base.

3.3 SOCIAL POLARIZATION

Programs for the privatization of land can create or contribute to tensions between the propertied and the property-poor in several ways:

- ♦ The transfer of state-owned assets to private owners in transition countries is only superficially similar to such transfers in capitalist countries. The predominance of state bureaucracies in transition countries produces opportunities for people in positions of bureaucratic power to get disproportionate access to the privatized properties (Frydman and Rapaczynski 1994).
- ♦ In some countries, privatization has favored or threatened to favor one ethnic group over another (Gleason 1993; Stanfield 1996).
- ♦ Imperfections in transition countries' capital markets produce problems in the land markets.¹³ When credit institutions begin to function, lending is restricted to short term, high yielding projects for a few borrowers. On the capital demand side, the lack of functioning capital markets means that only people with accumulated capital of their own, frequently from expatriate remissions or from illegal activities, participate in land markets.

The danger is that a few people or companies which manage in one way or another to take advantage of position, ethnicity or restitution claims to acquire a disproportionate share of privatized properties, or manage to get disproportional access to capital, will dominate the land markets as they emerge, setting the stage for the polarization of the society into a few landlords and a mass of people without property.¹⁴

The challenge for transition countries is to achieve the positive aspects of the shift to institutions of private land markets while minimizing the negative aspects.

Without a clear commitment to privatization of land and other fixed assets, and without including in the rights of the private holders the right to engage in land market transactions, there is little likelihood that the expected economic and productive benefits of the market economy model will materialize. Without a clear commitment to dealing with the negative aspects of land markets, social tensions and environmental problems will accumulate and threaten to undermine the positive aspects of the shift to market institutions. The institutional challenge of land administration in transition countries is to get land markets to work more positively than negatively.

¹³ See Carter and Mesbah (1993) for arguments about how capital markets discriminate against the resource poor in capitalist economies, with special reference to Latin America.

¹⁴ See Stanfield (1998) which describes these sentiments in Dagestan as influential in the public referendum disapproval of the introduction of land markets. See also Frydman and Rapaczynski's (1994) discussion of financial reforms in Eastern Europe.

4. MAKING LAND MARKETS WORK “PROPERLY”

Even with a strong commitment to creating private ownership rights, including the right to transfer properties, there is no assurance that such markets will function without substantial investments in other institutions which buttress land markets.

4.1 MARKET DYNAMISM AND ACCESS

Three types of land market institutional investments are needed for land markets to work in a dynamic way and which are easily accessible by even disadvantaged sectors of the population: registration of property rights, legal framework for land markets, and land market professions.

4.1.1 Registration

Institutional capacity is needed to provide accessible, accurate, inexpensive, and legal evidence as to who owns (and holds other rights to) land, that is, a system for registering rights to land. An effective registration system makes transactions *easier*, since buyers of rights can be relatively secure in their belief that they are dealing with sellers who are legal owners of the rights and have the legal right to sell. An effective registration system makes information about property rights easily *accessible*, at low cost to the general public in order to keep transaction costs low and not prejudice the rights of disadvantaged sectors of the population. An effective registration system helps encourage private *investments* and thereby make the economy grow, since it helps convince the registered holders of the land that they will profit tomorrow from the investments which they make today.

To the degree that interests in land are registered, and to the degree that the law and courts are able to define and protect these interests, we can say that there is a degree of formal security with which people hold these rights. If the formally registered rights are successful against all other claims to the registered properties, then the holders of registered rights are likely to believe that they are secure in their rights (subjective security). If, however, there are competing claims, such as those of ex-owners which in practice are strong (Lemel 1996), either because of the weakness of the legal system or because of the strength of local customs (Gjecov 1989) or some combination of these factors, there may be formal security but not subjective security of tenure. Without subjective security, it makes little difference what claims are made about formal security.

If people believe in their ownership or in their valid holding of other rights to immovable property, and if there is formal, documented validity of their claims, such security of tenure influences or should influence positively several aspects of the economy:

- ♦ the frequency of transactions of properties (the dynamism of the immovable property markets) since buyers can positively identify the owners of property who have the right to sell;
- ♦ the relative market value of properties, since clear definitions of who owns properties which are marketable attract investors, that is, increases the demand for such properties;
- ♦ the frequency of mortgaging of properties, since banks are able to foreclose on identified owners of legally registered properties who have agreed to place such properties as collateral for loans; and

- ♦ the extent of long-term investment in properties by their owners or renters, since the holders of such properties have the secure expectation of being able to benefit in the future from investments made today.

Some transition countries have apparently not been systematic in their evaluation of registration options and have assumed that the pre-war, traditional model of institutionally separate registration and cadastre systems is the best long-run model. In Romania, for example, as in other Eastern and Central European countries, the tendency has been to search in their pre-1946 past for institutional models for re-creating their dual systems of registration and cadastre.¹⁵

This tendency to look backward in history for models rather than analyzing present and future needs ignores the cost of subsequent modernization.¹⁶ Romania's decision to adopt what is basically the traditional Central European model of an immovable property registration with a separate cadastre¹⁷ does not appear to be informed of the problems of that institutionally bifurcated system which have been the cause of much distress and expenditure of funds in recent years in several European countries. For example, Austria has been investing several million dollars for the past eight years in unifying the cadastral mapping institution with the land registration offices, not through actual merging of agencies, but through the use of a common database by the cadastre and registration offices. Switzerland is investing \$1.3 billion dollars in the modernization of its immovable property registration system, much of which is being devoted to correcting the problems which derive from there being two separate institutions. Hungary opted two decades ago to unify the cadastral mapping and registration offices.

Within a few short years, therefore, Romania and other Eastern European countries may join the rest of Europe in rejecting the bifurcated system, making multi-million dollar investments to undo what they have just done.

The other part of a comprehensive registration system is the unification into a single registration system of rights to urban and rural land, publicly and privately owned. This is a difficult institutional task, since the history of the socialist land administration agencies was highly sectoral, with some agency, such as the Bureau of Technical Inventory in the FSU countries, being responsible for maintaining information about rights to urban buildings, and the agricultural cadastral agencies being made responsible for keeping track of who uses what agricultural land, and under what tenure regimes.

In the Kyrgyz Republic, the decision to create a registration system is guided not by the idea to reach back in history for registration models, but rather to adapt the existing institutions to the new needs of the market economy. The draft Law for the Registration of Immovable Properties, Article 3, says:

Authorized Rayon and City departments for land and immovable property registration, which are legal bodies subordinate directly to the state body under the Government of Kyrgyz Republic, will serve as Rayon and City Registration Bodies.

¹⁵ For the "dead end road" interpretation of the past 50 years, see Giordano (1993). For a description of the Central European model of Registration-Cadastre, see Böse (1995).

¹⁶ See UNECE (1996) for a discussion of this problem.

¹⁷ See Stanfield (1996) for a review of the policy debates about registration and land markets in Romania as of mid-1995.

This could mean that existing *rayon*¹⁸ and city entities for registration will continue to exist and keep their own records which presently exist but will be reorganized under a sort of coordinating state body. This concept excludes that of a separate, unified registration office in each *rayon* or city, nor does it apparently contemplate a complete review of the results of privatization to correct inevitable errors.

The viability of a computer-based registration system linking the various agencies that record rights to real estate is very doubtful under current conditions in countries in crises. There is very limited experience and capability for creating and maintaining a complicated network of computers in other than the major cities of most of these countries. In most *rayons* of the country, if a computer malfunctions, repair and maintenance help is usually not readily available. Systems design and testing, as well as the design of security procedures, anti-virus protection, back-up file management, and maintenance of computer systems require substantial investments in people. This type of training should begin, but registration offices should not be dependent on these investments in the medium term.¹⁹ If the registration system is dependent on computers which become inoperative, the recording of transactions will be constrained. In addition, the electric network will be unreliable probably for several years because of the economic crises these countries are experiencing. Computer systems do not work on batteries or manual generators.

The cost of maintaining several registration bureaucracies is much higher than combining registration functions into a single institution. The present transition has seen several institutional innovations and reorganizations, and will require more. It would be cost-effective in the long run to combine and reorganize registration bureaucracies now when there is momentum for change. This argument means, however, that a country's leadership has to transfer functions, staff, and budget from existing registration agencies to the unified system, which is a costly and difficult task.

The variety of privatization programs has created a variety in the types of rights to immovable property in a variety of documents scattered across many offices. A single, unified system of registration and certification of ownership and use is needed to provide easy access by people to information about who holds what interest to what land. Transactions costs which are very high in the present highly fragmented property information records can be dramatically reduced in unified registration offices.

There is a high probability of errors in the privatization programs' description of privatized properties and in their allotment to individuals and companies. A complete review of privatization actions under a single set of rules and under the direction of a Registrar, which is required for initial registration, is the opportunity for correcting errors that could plague the country for many years into the future.

4.1.2 Market facilitating and guiding laws

A legal framework which is widely known by the general public is of critical importance for the land market economy to work. This legal framework defines the rights and responsibilities of

¹⁸ *Rayon* is an administrative unit one level below the provincial (*oblast*) division of a country.

¹⁹ See Mohamed (1995) for a description of the systems design difficulties of a project in Russia.

owners, of the holders of subsidiary use rights (e.g., renters, holders of easements), and of the holders of mortgages or of other claimants which restrict the right of owners to transfer ownership. This legal framework has to be clear and consistent. Neither of these requirements is common in transition countries. Many land market laws have often been copied in imperfect translation from Western countries. Moreover, legislation often gets approved in response to crises or to international political pressures, without a sufficient corps of legal people specialized in legislative drafting to assure consistency among a country's laws.

4.1.3 Market professionals

A network of competent and accessible professionals in support of land markets is necessary to assure that people know their rights and responsibilities as owners, and that transactions are carried out in the legally prescribed ways. This network is typically composed of: (a) lawyers and judges well versed in the new legal framework for privatization and for the protection of rights and enforcement of responsibilities of the holders of the privatized rights; (b) specialists in conveyancing (notaries and/or lawyers); (c) real estate brokers who provide information to the public about land available or desired; (d) assessors of land values who advise market participants on the appropriate price to be paid for any piece of land; (e) land surveyors who describe the location and boundaries of land parcels; and (f) administrators of land use regulations which impose certain restrictions on the rights of owners to use the land.

4.2 ALBANIAN ACTION PLAN FOR IMMOVABLE PROPERTY REGISTRATION AND OTHER MARKET PROGRAMS

Albania has developed a project, directed by the Project Management Unit (PMU), for building on the achievements of the privatization programs in two ways: (1) the creation of a new Immoveable Property Registration System (IPRS) as a core institution for the smooth and efficient functioning of immovable property markets, and (2) the development of policy and programmatic options for improving the dynamism of land markets and for dealing with some of the potentially negative aspects of the emerging market-based economy as pertaining to public and private rights in land and other fixed assets.

4.2.1 Creation of a comprehensive Immoveable Property Registration System

In this program, Albania is creating a *comprehensive* registration system in two senses: (a) the registration of legal interests and the mapping of property boundaries are done in a single administrative system; and (b) interests in or rights to all land—urban and rural, private and public—are recorded in that same, single administrative system.

The “comprehensive” Albanian effort aims at unifying registration and mapping functions into a single, decentralized administrative body: the District Registration Office under the management of the District Registrar. All records of privatization and subsequent transfers of rights are being incorporated into *kartela* (records of ownership and other interests in each property) and into the archives of these Registration Offices.

The effort to create the new Registration System is planned to last through 2001 in order to initially register all properties, urban and rural, publicly and privately owned for the entire country. Initial registration of properties is done by the following steps:

- ♦ The creation of registry index maps, that is, the mapping of land that people actually possess and to which they claim some right within a specific geographic zone at an appropriate scale. A geographic zone is called a cadastral zone in Albania, which in rural areas generally coincides with the smallest administrative unit of the country—the village. In cities, cadastral zones are created to coincide with neighborhood boundaries, so that no more than 100 properties are found within them.
- ♦ The checking of the claims with privatization documents issued since the implementation of privatization programs beginning in 1991.
- ♦ For private-sector housing which families have possessed prior to 1991, and to which they presently claim ownership by inheritance or prior purchase, a special procedure is provided by the Registration Act to record them onto the Registry.
- ♦ Preparation of the *kartela*, one for each land parcel or apartment (or other part of a building which is distinctly owned) and the subsequent creation of a database from these *kartela*. Each *kartela* contains information on the geographic location of the property, its unique identification number, its size, the name or names of the owners, holders of subsidiary rights (e.g., leases or easements), and holders of mortgage rights.
- ♦ Preparation of lists of owners and their properties within the defined cadastral zones.
- ♦ Public display of the registry index maps and property lists in a prominent place in each cadastral zone for 90 days, with procedures for correcting the *kartela* and the maps.

Once initial registration is completed by the registration project field teams, the *kartela*, registry index maps, and title documents are passed to the District Registration Offices.

The main property rights being initially registered include:

- ♦ family ownership rights of ex-cooperative agricultural land privatized under Law 7501;
- ♦ family usufruct rights of privatized ex-cooperative and ex-state farm parcels;
- ♦ ownership rights of some ex-cooperative and state-farm land that had originally been allocated as in-use;²⁰
- ♦ individual or joint ownership of privatized housing;
- ♦ individual or joint ownership of commercial properties;
- ♦ private (individual or joint) ownership of restituted properties within the urban zones of municipalities;
- ♦ private ownership of property based on court determinations of ownership or on documented pre-1991 private ownership of homes; and
- ♦ public ownership of agricultural land which was not privatized, as well as of roads, canals, parks, forests, and other public properties.

²⁰ Parliament approved Law No. 8053 (21 December 1995) to automatically convert usufruct rights to ownership rights for certain types of state land used for agriculture.

Subsidiary interests which transfer the rights to use properties from owners to other users are also registered, including the leasehold rights of state-owned or privately owned properties, restrictive agreements, and easements. Interests which restrict immovable property transactions are also registered, such as mortgages (commercial as well as legal²¹), and registrar or court-ordered cautions against dealing in specific immovable properties.

4.2.2 Institutional issues encountered in the registration component of the Action Plan

Major institutional issues were encountered in the Albanian effort to create a new, comprehensive immovable property registration system, some of which were predicted in the United Nations Economic Commission for Europe publication, "Guidelines for Land Administration." These institutional issues are also common in other transition countries.

4.2.2.1 Inter-governmental coordination

The Action Plan is under the general coordination of a Coordinative Working Group composed of representatives from five ministries (Construction and Tourism, Agriculture and Food, Justice, Defense, and Finance). The first three have been the major forces behind privatization, while the Ministry of Defense houses the major mapping agency of the country and the Ministry of Finance has potential interest in the land taxation potential of the new registration system.

In reality this group has functioned only sporadically. The ministry representatives attend the rarely called meetings, but often do not carry back to their ministries information about project activities and plans. They do communicate with the project staff about what their ministries are doing in the area of privatization, and have helped coordinate activities. The best example is the registration of condominium units by the registration project, rather than the Ministry of Construction launching its own registration effort.

4.2.2.2 Investing in the geographic information infrastructure

A major problem concerns how the registration project should invest in the geographic information infrastructure (EUROGI 1995). Since the beginning of the implementation of the Land Market Action Plan, there have been difficulties concerning the use of equipment acquired for producing the registry index maps for the Immoveable Property Registration System.

The Project Management Unit/Immoveable Property Registration System (PMU/IPRS) is mandated by the Council of Ministers to help Albania improve its technical ability to gather, process, store, and retrieve geographical information. However, since the country is in transition to a market economy, most of its state institutions created for the command economy are either disappearing or are being radically re-structured. In addition, private sector agencies for surveying and mapping do not exist or are only beginning to emerge.

The major state mapping agencies which have functioned in the past and which continue to operate are:

²¹ Legal mortgage is similar to a land contract arrangement in the United States.

- ♦ The Military Topographic Institute, which produces topographic and thematic maps at 1:10,000 scale and smaller, but which operates under the remnants of regulations which regard geographic information as state secrets;
- ♦ Land Research Institute, which has produced land use maps for state agricultural enterprises, at 1:5,000 scale, but which no longer has these clients because state agricultural cooperatives and enterprises have been privatized;
- ♦ Autonomous Geology and Geodesy Company, which has produced maps of buildings and roads for urban areas at 1:500 and 1:1,000 scale for the Ministry of Construction, but as the privatization of construction is progressing, this newly privatized agency is not secure in its funding from the Ministry; and the
- ♦ Geographic Institute of the Academy of Sciences, a research entity which has produced thematic maps of various scales and which has installed ArcInfo, but which has little production capabilities and a history of non-cooperation with map-producing agencies.

One dilemma is that if the PMU/IPRS makes capital investments in the form of new technology in these old state institutions before they make the organizational and staff changes required for the new political economy, the country risks the loss of the capital invested should these agencies disappear. An equal risk is that the old state organizations will use financial support to delay making necessary organizational changes thereby only delaying the transition. Moreover, if the PMU/IPRS invests in these old state agencies, it may discourage the growth of the infant private sector which would be a major actor in the field of geographic information in the future. On the other hand, if the PMU/IPRS simply puts off the acquisition of new technology, it risks losing the investment capital available now as donations from international agencies.

An interim institutional strategy which has been adopted by the PMU/IPRS is to acquire new technology with the investment capital provided to the Land Market Action Plan project, retaining the ownership of that equipment for the duration of the project. The PMU/IPRS then carries out tenders to select companies for providing the specialists and supervisors required to produce the geographic information, with the PMU/IPRS providing specified equipment to be used by the selected contractor. Any private company or governmental agency with the technical capacity for the required work is invited to bid on the tenders. The bids are evaluated primarily on the technical level and experience of the personnel they propose plus their quality control proposals, and secondarily on their cost proposal. Payment by the PMU to the contractor is tied to the quantity of work done, so that the contractors have an incentive to maintain the equipment loaned to them by the PMU in good condition. Once the Action Plan is completed, the PMU will sell the used equipment at auction and transfer the funds generated to the budget of the Chief Registrar.

4.2.2.3 Developing the Geographic Information Infrastructure (GII)

The Geographic Information Infrastructure (GII) is of crucial importance for the installation and maintenance of infrastructure, such as roads, water and sewer lines, electrical networks, telecommunication networks, as well as for facilitating investments in housing, tourism, agricultural and industrial projects for both private and public sectors of the economy. Such information is also of crucial importance for assuring the environmental health and security of future generations.

Presently in Albania there has been limited investment in the GII after the systemic crisis of the 1980s and the shift to the market economy model after 1991. The global development of geographic information (GI) technologies provides some useful techniques for linking GI with public and private decision making about investments. Albania could take advantage of this technology quickly. However, there is a danger that if different Albanian organizations acquire different GI technologies, there will be problems of compatibility of information and needless multiple investments in maintenance of GI and training of people who use these technologies.

Albanians have considered several ways to avoid these problems. One alternative is to channel all GI investments through a single state institution. However, this option would probably not allow the rapid introduction of GI technologies and would suffer the well-known problems of coordination between the state and private companies.

Another alternative is to combine existing state agencies which produce geographic information into a self-financing, stock-based company, privately and publicly owned, which would combine the capital resources of existing mapping entities. To date, however, these agencies have not been willing to join together in a single GI corporation. Yet another mechanism is to create a GI Coordination Committee from all or some of these agencies which would develop ways to coordinate GI investments in separate state agencies. Legislation has been prepared to create this committee, but interest has been limited to the Department of Geodesy of the Faculty of Engineering at the University of Tirana, the PMU/IPRS, the Military Topographic Institute, and the Land Research Institute. And, lastly, the government could create a special GI Coordination Unit with specialized Albanian staff and with the participation of foreign advisors nominated by international donors interested in supporting GI development.

Given the difficulties encountered with the first three options, serious consideration is now being given to the fourth. Under this option the government could take two simple but important steps. The first would be to create the GI Coordination Unit as an independent economic entity, but reporting to an appropriate governmental entity. The second step would be to request international donor agencies to provide funding and technical assistance to support the Coordination Unit. Donors would be asked to agree to coordinate all funding with this Unit.

The GI Coordination Unit would have several responsibilities:

- ♦ establish standards for GI data creation and transfer;
- ♦ develop rules for maximizing easy access of all users of GI databases;
- ♦ invite and help develop proposals from any public or private agency for the development of specific Geographic Information Systems, according to agency priorities.
- ♦ provide technical and financial resources to the GI user agencies whose proposals are accepted for support, which will then contract with GI generating agencies, public and private, for their information needs; and
- ♦ link Albanian GI agencies and companies with European and other international efforts to establish common standards and symbologies to facilitate international GI sharing.

4.2.2.4 Centralization/decentralization

The District Registration Offices are designed to be self contained, that is, they have the authority to register changes in parcel maps and *kartela* when proper documents are presented

and procedures followed, and to collect registration fees. At the same time, the Central Registration Office exists with functions of monitoring the financial operations of each Registration Office, providing technical assistance and training to Registration Offices, receiving complaints about improper behavior of Registrars and acting on these complaints, providing needed budget support, and archiving *kartela* and map information.

4.2.2.5 Relations between public and private sectors

In 1993 there were no private land surveyors, no notaries, only one informatics consulting firm, and no private capabilities for map production. Moreover, there were no rules for governing the contracting of private firms in the many activities of surveying, mapping, and information management which comprise the registration component of the project. In recent years, the project has been able to contract with private land surveyors for all parcel map updating done in the field, for all data entry of *kartela* information, for the digitization and printing of maps, and for information systems design. As part of this process, procedures have been developed and implemented for the incorporation of project imported equipment into contracts with private agencies for field surveying and digitizing.

4.2.2.6 Access to property information

Kartela and map information is available to the general public upon demand and at no cost, if the request concerns a specific property. The only restriction presently on access to the *kartela* database is for requests to list all properties of a particular person. This type of request must be authorized by a court.

As yet the policy for charging fees for information has been to charge only costs of reproduction.

Standards for the storage and exchange of information have been developed within the project only, without coordination with other agencies.

4.2.2.7 Training and public information

Training programs are being implemented to prepare the staff of the District Registration Offices to assure the validity of the information therein registered. In order to improve the probability of accurate and precise registration of rights, training is also provided to the notaries who prepare documents for registration, including the provision of standard forms for different types of transactions and instruction in their preparation.

For facilitating transactions, an association of assessors or valuers has been created based on course work at the Polytechnic University of Tirana. Also, an association of real estate agents and associated professionals is emerging.

4.2.2.8 Remaining problems of title

The practical effort to initially register properties created through the various privatization programs has shown that there are a number of problems with these privatization programs, and that these problems need to be corrected before real estate markets can function properly.

An example is the title situation for agricultural land, whose privatization was implemented under Law 7501 of 19 July 1991. During updating and initial registration, the PMU/IPRS has documented that anomalies occurred during the 1991 land reform process which are in

opposition to the legal norms on which this reform is based. These discrepancies have also been documented in land policy studies.

One serious problem is that in many villages and in some entire districts the documentation for land privatization is incomplete. In some cases, the allotment certificates (the *tapi*) have not been issued.

Another problem is that in many cadastral zones the initial distribution of the land was done according to Law 7501, but then some farmers decided to take possession of their former family properties. This has caused not only obstacles for the registration project, but also conflicts among the farmers.

4.2.2.9 Problem of cadastral zone boundaries

In order to have a comprehensive system for the registration of rights to private and publicly owned properties, the entire area of the country must be brought into the IPRS. Priority has been given to the registration of private ownership and use rights in the agricultural areas of the approximately 2,900 villages in the country. The registration field teams are also recording state-owned roads, canals, and non-privatized agricultural parcels as well as public buildings such as schools and clinics in the agricultural areas. These “agricultural use” land parcels are locally known to be within the boundaries of a village, which for registration purposes has been called a cadastral zone.

However, around the agricultural fields and settlement areas of most villages are state-owned pastures used by local families, as well as state-owned forested land formally under the administration of the General Directorate of Forests and Pastures (GDFP), as well as military installations under the Ministry of Defense and state-owned waste lands. The Cadastral Zone boundaries of all these lands are not defined. A program is needed to get neighboring villages to agree to the boundaries, and to coordinate the setting of these boundaries with the GDFP so that natural and economic boundaries already recorded on the GDFP cadastral maps can be used and incorporated into the IPRS.

4.2.2.10 The problem of state ownership of real estate

Non-privatized land and buildings remain as state-owned property (except for houses which were continuously occupied by their owners prior to 1991, and never formally expropriated). However, there has been no further precision of what agency of the state has management responsibility over these state properties, nor what the procedures will be for transferring their management to units of local government which are most capable of effective use and maintenance.

A legal framework for defining public ownership is needed (a draft law has been prepared by the PMU/IPRS), as well as actions taken for the adequate description of the boundaries of such properties and for assigning their administration to specific agencies.

4.2.2.11 The problem of land degradation

There are three general types of land degradation problems which have emerged in Albania: excessive soil erosion, contamination of surface and ground water, and urban sprawl on high-quality agricultural land.²²

Excessive soil erosion is caused by: (a) cultivation of highly erodible agricultural land; (b) conversion of forest and pasture land to inappropriate agricultural use; (c) deforestation of fragile forested lands; and (d) overgrazing of forest and pasture lands by cattle, sheep, and goats. The problem arises when the rate of soil loss far exceeds the tolerable level to maintain the productive capacity of land. This problem, if unchecked, gives rise to others such as the sedimentation of hydroelectric dams and irrigation systems.

There are three major types of contamination of surface and ground water. The location of municipal solid waste facilities in rural areas reduces the amount of agricultural land available for crop production and, if not properly located by taking soil types into consideration, will pollute groundwater. Sediment from soil erosion, along with fertilizers and pesticides carried with soil particles, contaminates surface and ground water and reduces its quality for irrigation, industrial, livestock, human, fishing, recreational, and livestock purposes. The third type of contamination comes from industrial and agricultural sources. Factory and mining wastes often flow onto the surrounding land and produce contamination of the soil. Also, the pumping of wells along the Adriatic coast can produce the filtration of salt water into the aquifers which then is pumped onto the soil, producing problems of salinity.

Unguided urbanization on high-quality agricultural land is also a threat to valued land resources. The construction of homes outside the periphery of established urban zones (where over one-third of prime agricultural land is located) without construction permits is increasing, thus reducing the availability of highly productive land and affecting food production.

Since these problems are not sectoral in nature, multi-ministry coordinated actions are necessary. An inter-ministerial working group has been formed to develop a Land Protection Action Plan, which will be used to guide and coordinate priority projects.

²² This section is based on the conceptual work done by James Bockheim (1997) to develop the Land Protection Action Plan.

5. SUMMARY AND CONCLUSION

The transition “from plan to market” in most of the formerly socialist countries is dramatically changing the management of land, with private ownership and use supplanting centralized state management. Land administration must, therefore, also change radically, obliging countries to create new institutions of land administration.

This paper has presented some comments on the process of the privatization of land rights and management and the resulting changes in land administration in various transition countries. The focus of the paper, however, is on the experiences in Albania to illustrate how in one transition country the privatization of land management has evolved in practice. Second, this paper describes a strategy for improving the dynamism of land markets through the creation of a comprehensive system for the registration of rights to land, development of a legal framework for the protection of property rights, and the strengthening of land market professions.

Finally, the paper discusses some of the institutional problems of land administration in Albania: intergovernmental coordination of land administration; investments in the geographical information infrastructure; the balance between centralized and decentralized land administration; relations between public and private sectors; access to property information; training and public information; the lingering constraints on creating private and public ownership rights to land; and the problems of land degradation.

This paper has dealt only tangentially with the necessity of avoiding the triple dangers of the land privatization and land market, that is, the fragmentation of landholdings, the polarization of society into the propertied and the propertyless, and the degradation of the natural resource base. These are topics for further analyses.

The institutional challenges for creating new rules of land administration under the influence of the massive privatization movement are substantial. In the 1970s, fearing invasion from every side, Albania constructed 700,000 concrete bunkers. These bunkers are now hampering the new holders of the land, but are very difficult to extract and even harder to recycle their materials to other uses. To extract and re-shape the institutional bunkers of the past, and yet create new opportunities for the most valuable components of these institutions, the people themselves, is the challenge of those struggling with land administration institutions.

REFERENCES

- Albania. N.d. "Environmental Status Report, 1993–1994." Tirana: Ministry of Health and Environmental Protection, Committee of Environmental Protection.
- Bockheim, James G. 1997. "Preparation of Action Plan for Protection of Land in Albania." LTC Working Paper, no. 8. Madison: Land Tenure Center, University of Wisconsin, September.
- Bojnec, Stefan. 1995. "Structural Reforms and the Agricultural Sector in Central and East European Countries." Paper prepared for Third Ministerial Consultation on Agricultural Policy and Reforms in Central and Eastern Europe, Prague, 13–14 November.
- Böse, Peter. 1995. "The Guarantees Provided by Registration and the Principle of Publicity." Paper presented to Seminar on the Registration of Immovable Property, Tirana, Albania, June.
- Carter, Michael R., and Dina Mesbah. 1993. "Can Land Market Reform Mitigate the Exclusionary Aspects of Rapid Agro-Export Growth?" *World Development*, vol. 21, no. 7, pp. 1085–1100.
- Carter, Michael, Gershon Feder, and Michael Roth. 1995. "Land Tenure and Agricultural Performance: Reflection on Global Experience." In *Transition of China's Rural Land System: Papers from International Symposium on Rural Land Issues in China*. Symposium sponsored by Development Research Center of State Council, People's Republic of China, and Land Tenure Center, University of Wisconsin–Madison, USA, 8–10 October 1992, in Beijing, China. LTC Paper, no. 151. Madison: Land Tenure Center, University of Wisconsin.
- Dale, Peter F., and John D. McLaughlin. 1989. *Land Information Management*. Oxford University Press.
- De Crevecoeur, St. John. 1963. *Letters from an American Farmer*. New York: New American Library.
- EUROGI (European Umbrella Organisation for Geographic Information). 1995. "Towards a European Geographic Information Framework." GI2000 Discussion Document. Brussels: EUROGI, 31 December.
- Frydman, Roman, and Andrezej Rapaczynski. 1994. *Privatization in Eastern Europe: Is the State Withering Away?* London: Central European University Press.
- Giordano, Christian. 1993. "Not All Roads Lead to Rome." In *Eastern European Countryside*. Promotion Issue. Torun, Poland: Nicolaus Copernicus University, Department of Sociology.
- Gjecov, Shtjefen. 1989. *The Code of Lek Dukagjini*. New York: Gjonlekaj Publishing Company.
- Gleason, Gregory. 1993. "Central Asia: Land Reform and the Ethnic Factor." *RRFI/RL Research Report*, vol. 2, no. 3, pp. 28–33.
- Jarchow, Stephen P. 1991. *Graaskamp on Real Estate*. Washington, D.C.: Urban Land Institute.

- Kazakhstan. 1995. "Progress and Problems in Land and Agrarian Reform." Bishkek: Republican Center for Land and Agrarian Reform, Ministry of Agriculture and Food; and Madison: Land Tenure Center, University of Wisconsin–Madison, 31 July.
- Kopeva, Diana, with Marvin Jackson and Keith Howe. 1994. "Land Markets and the Role of Government during Economic Transition: An Appraisal with Reference to the Draft Land Lease Law." Sofia, Bulgaria: Ministry of Agriculture, PHARE Programme, April.
- Larsson, Gerhard. 1991. *Land Registration and Cadastral Systems*. New York: John Wiley and Sons.
- Lemel, Harry. 1996. "Tenure Security." Report for the PMU/IPRS.
- Libert, Bo. 1996. "FSU-Environmental Heritage." London: International Publishers.
- Lusho, Sherif, and Dhimitër Papa. 1998. "Land Fragmentation and Consolidation in Albania." LTC Working Paper, no. 25. Madison: Land Tenure Center, University of Wisconsin, December.
- Mohamed, Mohamed A. 1995. "Development and Implementation of a Real Estate Information System for Nizhny Novogorod, Russian Federation." Madison: Land Tenure Center, University of Wisconsin, 30 August.
- Place, F., and M. Roth. 1992. "Land Tenure Security and Agricultural Performance in Africa: Overview of Research Methodology." LTC research paper. Madison: Land Tenure Center, University of Wisconsin.
- Rasmussen, Kathryn. 1996a. "Existing Systems for Immovable Property Registration in the Kyrgyz Republic." Washington, D.C.: International City/County Management Association, May.
- . 1996b. "Land Rights in the Kyrgyz Republic and their Registration under the Pilot Immovable Property Registration Project." Washington, D.C.: ICMA, May.
- Sherraden, Michael. 1991. *Assets and the Poor: A New American Welfare Policy*. Armand, N.Y.: M.E. Sharpe.
- Stanfield, David. 1998. *Land and Ethnicity in Dagestan*. LTC Tenure Brief, no. 2. Madison: Land Tenure Center, University of Wisconsin.
- . 1996. "Study of the Romanian Land Market." Black Earth, Wis.: Terra Institute, 12 December.
- . 1993. *Administration of Land Resources for the New Market Oriented Economy in Kazakhstan*. Madison: Land Tenure Center, University of Wisconsin, and Terra Institute, November.
- Stanfield, David, and Agim Kukeli. 1995. "Consolidation of the Albanian Agricultural Land Reform through a Program for Creating an Immovable Property Registration System." *Computers, Environment and Urban Systems*, vol. 19, no. 2, pp. 131–140.
- UNECE (United Nations Economic Commission for Europe). 1996. *Land Administration Guidelines: With Special Reference to Countries in Transition*. New York and Geneva.