

Report on Albania Mission, 6-17 July 1998

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by

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INTRODUCTION¹

In 1993 the Government of Albania approved the Land Market Action Plan². The objective of the Plan was to create a set of institutions that would establish a broadly-based and dynamic private market for immovable property³ in Albania. This involved not only the creation of a land (immovable property) registration system adequate to meet the needs of a (hopefully) rapidly expanding economy, but also permitted a nation-wide land protection (environmental) strategy, and the creation of new land market professionals (realtors, notaries, property surveyors, assessors, GIS specialists, etc.).

The Immovable Property Registration System (IPRS) was intended to establish a new paradigm, useful not only in Albania, but which might be applicable to many countries engaged in creating or reforming their registration systems. The establishing of dynamic immovable property markets is a particularly critical issue throughout Central and Eastern Europe and other newly independent states emerging from the former Soviet Union and its satellites, few of which have moved with the speed of Albania.

It features a complete integration of parcel maps and registration information. It aims at a recording system that is reliable while being simple to administer and to use, and is resistant to tampering.

As noted in the June 1998 report of the Meeting of Officials on Land Administration (MOLA)⁴, the original Action Plan of 1993 has led to extraordinary progress in 6 years: 1.1

¹ Preliminary Caution: This report is based on an 11 day mission. Obviously it must make generalizations about facts and conditions in Albania which the author could not personally confirm, and the reader should view with an appropriate caution.

² -- for full details see Jazoj, Stanfield, and Barry, Albanian Land Market Action Plan: Purposes, Achievement, Lessons, Land Tenure Center, Albania Series Working Paper No. 1, September 1997.

³ Note on Terminology: The word "immovable property" used in this report, is essentially synonymous with the English term "real estate." It includes both land and structures permanently attached to it. The word "land," as used in Albanian legislation sometimes includes structures as well. However, meanings should be clear from the context.

⁴ For further details, see MOLA report, Technical Review of the Albanian Land Market Action Plan, Tirana, July 6, 1998. 70 pages.

million of the 3.0 to 3.5 parcels in the country have been put into the system, and registration offices are operating in all parts of the country. The day to day operations of the system is being continuously improved by the development of new forms and procedures to deal with operational problems as they occur. Many challenging problems still remain, but the achievement of project has been truly exceptional, particularly in light of the fact that Albania, already one of the smallest and poorest countries in Europe, suffered an almost total breakdown of government and public order during 1997.

In 1998 the project was extended from its original deadline of September, 1998 to December, 2001, and new funding was granted. Simultaneously, it was decided to make a complete review of the entire program in two categories: (1) a technical review of procedures and institutions being created for immovable property registration, and (2) a review of the larger issues of the role of the new registration system in establishing a dynamic land/real estate market in Albania, and the relation of the land registration system to the other institutions essential to make such a land/real estate market possible.

The MOLA report of June 1998 concentrated on the first of these. This report is primarily concerned with the second, although it will also comment on some of the institutional problems still facing the Immovable Property Registration System itself. A third report by Thomas Mehen (USAID) and Carl Mabbs-Zeno (USAID), currently in Albania, will cover the appropriateness of an institution building program for getting land markets to work; the professional development of notaries, real estate agencies, lawyers, [and](#) options for improving access of all segments of society into land markets, as buyers or renters as well as sellers of rights; and integration of the land market institution building strategy with [the](#) MOLA report on the technical aspects of the Immovable Property Registration System, noted above.

Contents of this (Doebele) Report:

In accordance with the Terms of Reference, this report will cover:

- (1) An analysis of the major institutions essential to the creation of a dynamic, transparent, and accessible land/real estate market in Albania. Such a market should facilitate transactions among all categories of buyers, sellers and renters; provide easily accessible and reliable information on all rights of ownership; provide easily accessible information on prices and trends in the prices (at least in relative terms -- prices on registries in most countries are systematically understated); and by means of transparencies and internal cross-referencing, keep corruption and errors to a minimum.
- (2) A review of the main types of rights and responsibilities in immovable properties that have been created in various privatization programs since 1991 -- although this must necessarily cover only the main points, since there have been literally dozens of laws and decrees on this subject, many only available in Albanian. (Note: For clarity of discussion, this report has integrated the material in this area into the presentation of area one.)

- (3) A very short comment on the possibility of redefining the meaning land ownership to include the duty of sustainable use of land resources. Time has not permitted a study of this topic.

Projected "Audiences" for this Report: This report is addressed to four sets of readers: (a) Albanians directly or indirectly associated with the Project Management Unit, the Immovable Property Registration System, or the Land Action Plan; (b) technical advisors in the same categories, both in Albania and in the U.S.; (c) relevant officials of USAID, Washington; and (d) persons from other countries expected to attend the MOLA conference in Tirana in September 1998. Because of the last category, certain discussions have been included that would not be necessary for categories (a), (b), and (c). The most important of these is a somewhat detailed discussion of "ideal institutions," which is designed to stimulate comment and discussion among attendees who come from countries in which the land registration system and related institutions may be at quite different levels of development compared to Albania. Readers in categories (a), (b) and (c) may wish to skim such sections (these carrying the designation **I.A.2.**, pages 6-8) quickly. (NOTE: Although the September conference will concentrate on the "property rights," and not on registration as such, it is probable that issues about the system will arise in the discussions. Part I.A.2. is simply a handy check-list for such a discussion.)

PART I⁵

Institutions Essential to the Creation of a Dynamic Real Estate Market

Five institutions have been identified as critical to creating a land/real estate market that will improve housing and promote economic development in Albania:

- (1) A legal system that provides an adequate set of ownership categories for all economic and social needs.
- (2) An efficient land registration system.
- (3) An efficient and up-to-date system of land use planning and control, that is: a method of establishing policy on the general directions of urban development; instruments to implement such policy; efficient administration of land use and construction permits; and related matters.
- (4) Banking and credit institutions capable of funding real estate activities efficiently and at lowest possible rates of interest.
- (5) An institution or set of institutions capable of dealing with the rapidly growing phenomenon of illegal urbanization in major Albanian cities.

⁵ Part I covers the first two items of the Terms of Reference, and is the main body of this report.

The report will: (A) describe an "ideal" set of institutions in each category; (B) describe the situation in Albania in each category; and (C) make comments and recommendations when appropriate.

Part I-A: Definition of an "Ideal" Set of Five Institutions Essential for a Dynamic Land Market

I-A-1. A legal system that provides an adequate set of ownership categories for all economic and social needs.

A good set of legislation would provide for all types of leases, servitudes, easements, restrictions on deeds, condominium ownerships, usufruct rights, mortgages, liens and other encumbrances, etc. as well as full ownership ("fee simple"). If, for example, a country has a Civil Code that limits leases on land to a maximum of 25 years, it would have defective institutions for ownership, since in a modern economy there are many transactions in which leases of over 25 are necessary to optimize the benefits to both parties. It would also cover landlord-tenant relations (to protect the rights of renters), define the rules for operating condominium associations to promote orderly management of large condominium buildings, provide for the designation and protection of historic buildings; and other similar specialized matters. An "ideal" system would also contain a complete set of categories of potential owners, permitting rights in land to be held by individuals, many forms of joint ownership, family owners (and define their rights), partnerships, corporations, trusts, non-profit organization, public agencies, etc.

The legal system should not create potentially conflicting ownership rights and claims without prioritizing them, or providing a speedy administrative or judicial method for resolving such conflicts. As will be discussed later, Albanian legislation appears to require improvement in some of these categories.

I.A.2. An "ideal" set of institutions for a land registry.⁶

An ideal land (including other immovable property) registry would include an efficient and reliable system for the registering of property rights in land that is (a) clear as to the persons who have rights, (b) clear as the exact rights possessed, and (c) precise as to the location of parcels where such rights exist.

Corollaries that flow from this are:

- a) A land registration system must be capable of accurately recording all of types of "persons" who have rights, i.e.: physical persons, legally created persons (corporations, trusts, etc.), and public and governmental institutions. Moreover, it should clearly record this legal nature, accurately identifying who individual are, rights based on family or similar relationships, the date and authority by which legal personalities were created and exist, and the precise nature of state and public agencies.

⁶ This section, I.A.2., is primarily to be useful to the September MOLA conference.

b) An ideal registration system must also have the capacity to accurately record the exact type of land rights that are being created, transferred, limited, or destroyed. As mentioned above, a corollary of this principle is that the nation must have previously created a broad catalogue of property rights that will permit the market to negotiate the precise type of land rights necessary to establish the most productive arrangement between them. For example, ideally, it should be possible to lease land for any time from one minute to 1000 years (or more), since it is impossible to predict what ownership relation may be the most beneficial to the specific transaction being made. (Some rules, such as the "dead hand" rule, preventing persons from controlling property rights for too long a period after their death, are, of course, also necessary.)

A nation's civil code normally establishes the basic "shopping list" of rights for private and public entities to use. However in all countries, changed economic and political conditions require the creation of new categories of ownership right -- as is now occurring, for example, in the field of electronic technology. Similarly, when a nation such as Albania is in a period of transition from a condition of almost complete ownership by the state to widely distributed private ownership, a significant number of special rights to achieve the transition are necessary. See further discussion later in this report.

c) An ideal land registration system should use the latest -- reliable, yet flexible -- methods for tying ownership rights to specific parcels, together with presentations and symbols that make maps reasonably readable to ordinary citizens.

d) An ideal land registration system should be resistant to errors and to corruption at the time of "initial filings" ("first registration"). That is, it should be difficult or impossible to file improper documents (whether intentionally or unintentionally improper), and should be impossible to bribe registering officials to do so.

e) An ideal system should make it impossible for registration files or maps already created to be tampered with. For example, in the IMPRS each kartela has an archive, usually in the form of a plastic envelope in a ringed notebook that contains the authenticating documents. A dishonest employee could remove some of these documents, undermining the legality of an ownership. An ideal system will have safeguards against this, such as having the documents in the envelope also listed on the face of the kartela. It is also possible to give complete receipts or copies of all supporting documents to owners, so that they have parallel files. Where electronic filing is used, tampering may be prevented by having duplicate "backup" files, stored in a different physical location.

f) An ideal registration system would have clear and speedy method for resolving conflicting ownership claims. Some conflicting claims can be resolved by the registry officials themselves. However, it may be unwise to give them too much discretionary power, because their basic functions are clerical and not judgmental. Where conflicting documents are "facially defective" -- that is, have errors (or gross improbabilities) that are "on their face", or where errors or improbabilities exist that are obvious simply from reading the document itself, without knowing other facts. Such claims can be rejected as a

clerical function, and the applicant requested their correction. Ideally, all other disputes should go to third-party resolution, in a fashion that permits speedy resolution.

- g) An ideal registration system is one that average citizens and all appropriate public officials know exists. They should also know its general characteristics, methods of operation, and the importance of registration to their personal financial security.
- h) An ideal registration system should be easily accessible to the public. It should be centrally located with respect to its user-population, and preferably on a main street with both nearby public transit service and parking for users. There should be clear signs identifying the location of the office, and chairs or benches for those waiting for service.

I.A.3. The third essential institution for the creation of dynamic land markets is an efficient and up-to-date system for controlling land uses and managing the spatial aspects of urban development ("urban planning").

As noted in the above categories, an ideal land use regulation system would have appropriate land-use ("zoning") categories for every type of land use that the society is likely to need, and an efficient way of reviewing and issuing permits to authorize such use when appropriate. In general, discretion should be kept to a minimum to inhibit corruption, but under modern conditions many important projects are necessarily on a large-scale and will therefore require discretionary review.

Land permitting procedures in all countries tend to evolve toward increasing complexity, and like a well-tended tree, must be regularly reviewed to prune away unnecessary steps and procedures. Conversely, in an ideal system, new requirements will be regularly added to respond to newly perceived problems, such as environmental controls to respond to new knowledge of the process of environmental degradation.

An ideal land use control system no longer requires the preparation of a detailed Master Plan that assigns future land uses for say, a 20 year period. However, it is the obligation of an appropriate planning agency to determine (with appropriate political approvals) the general directions in which the city should and should not grow, and to coordinate to the greatest degree possible a strategic plan for major infrastructure investments, particularly highways, that will give incentives to private investment to develop in such areas.

I.A.4. The fourth, and potentially one of the most critical, set of institutions is banking and other credit institutions capable of funding land development activities efficiently and at the lowest possible interest rates.

In all modern market economies, financing is the most central consideration in all land transfers and construction activity. A smoothly functioning real estate finance system is generally regarded as being necessary both to national economic growth and to the provision of the physical buildings necessary for housing, commercial, and industrial activities. The current economic crises in Southeast Asia and in Japan demonstrate how critical these institutions are. When real estate financing is granted too liberally, there can be devastating results to national economies. Albania is now on the other end of the spectrum, since it has very few sources of

credit for immovable property. An ideal system must be carefully calibrated to be neither too loose nor too restrictive. However, modern land and real estate markets cannot develop without strong and legitimate sources of mortgages and other means of credit. See discussion of the special situation in Albania later in this report.

I.A.5. The fifth set of essential institutions capable of dealing with the rapidly growing phenomenon of illegal urbanization.

Illegal urbanization falls into a number of categories:

(1) Illegal urbanization for housing is one of the great worldwide phenomena of our time. It has occurred in virtually every "Third World" city, and frequently represents 50% or more of the total urban population. Unfortunately, in spite of the expenditure of tens of millions of dollars by international assistance agencies, thousands of experiments, investigations, and reports by almost every international donor agency, and endless attention from domestic ministries, no country has yet found a "magic bullet" to solve this problem, although there is general agreement on what sorts of approaches are likely to be more productive than others.

Illegal urbanization for housing is a problem that tends to become more intractable with time, as the voting power of illegal settlers becomes more and more dominant. See discussion of the special situation in Albania later in this report.

(2) A second form of illegal occupation occurs when the parks and open spaces of cities are converted to private use. This has happened on a large scale in Tirana. (Even Central Park in New York City was occupied by squatters in the 19th century.)

(3) The third, and most economically damaging type is the illegal occupancy and development of touristic or other high value land, thus preventing its optimal development (or conservation) and doing long-term damage to national economic growth. See further discussion below.

Part I-B: The Situation in Albania with Respect to the Five Sets of Institutions just Described.

I. B.1. The Situation in Albania with respect to having a legal system that provides an adequate set of ownership categories for all economic and social needs.

Albania has just emerged from a long hiatus (1944-1990) in which there were virtually no categories of property except for state ownership. The last seven years have therefore been a game of "catch-up" to create in a few years all the forms of land ownership that have taken decades or centuries of evolution in market-based countries. Moreover, property rights have become considerably more complicated by the adoption the principle of "restituting" the rights of persons expropriated by the communist regime.

With the help of an Italian expert, Albania drafted and adopted a Civil Code in July 1994, apparently copied from one or more European codes. This Civil Code has an entire "book" (Book Two, with 407 separate articles, or some 40% of all of the articles in the Code) on ownership and

property. It establishes the categories generally found in "civil law" countries (as compared to national legal systems based on the Anglo-American "common law.") In May 1996, the Civil Code was printed in paperback form under the sponsorship of the Project Management Unit, so that it is now easily accessible (although post-1996 changes are of course not reflected). It should be noted that the Code was adopted only after much of the basic "transition" legislation, described below, had been passed.

One notable difference with common law (among others) is that civil law countries generally do not have the concept of a "trust," that is: title of an asset being owned by a trustee for the benefit of another. In "common-law" countries trusts are essential to many immovable property (real estate) transactions, the planning of inheritances, taxation, etc. Because of their practical usefulness, some civil law countries, such as Mexico, have created a form of trust called "fideicomiso" that is used for certain public purposes. Although it is far beyond the current terms of reference, the usefulness of the "trust" concept might be worth considering in countries in which basic legislative reform is now occurring.

Even before the Civil Code, Albania has passed a great deal of legislation, beginning in 1992 and still continuing to the present day, dealing with the transition from full state ownership to a very high degree of privatization. (An analysis for how successful this has been in Tirana is presented in Caro, Luli, Puka, Childress and Moores, Emerging Uses of the Urban Landscape in Tirana, Albania, June 1998. In 1991.) It has also adopted many decrees and other forms of regulation dealing with this transition. This body of law is difficult to fully analyze for several reasons: (a) Acts of the Albanian parliament (as in many civil law countries) tend to be very brief, depending on later decrees, regulations, or the day to day decisions of administrative bodies, to carry out their intent. (b) It is difficult to get completely accurate English translations, since small "shades" of meanings can be critical in law, whereas in other fields minor translation errors may be relatively unimportant (for example, restaurant menus). (c) Only in the past few years has there been indexing and systematic cross-referencing of national legislation. Without indexing, it is difficult to find all relevant legislation on a specific subject.

Moreover, there is the inherent problem that when any legislation -- even in the same language -- is summarized, it must necessarily contain distorting simplifications and omissions.

In October 1996 two paperback books were also published with the sponsorship of the Project Management Unit that collected all the laws, decrees, etc. on privatization from 1991 to 1996, containing perhaps 100 items. A full analysis of the laws and practice of privatization and the property rights it created would therefore be a major project, and is beyond the scope of this report. Instead a few selected acts will be discussed.

These are:

Law on the Land, Law 7501, 19 July 1991.

Background: In 1947, agriculture in Albania was collectivized and in the 1976 Constitution private rights to any form of immovable property were virtually eliminated. In the confusion that accompanied elimination of the communist system in 1990, agricultural production dropped, and by 1991 there were serious shortages of food. In Law 7501 a large part of land classified as

agriculture (about 1/4 of the area of the country) was returned to private ownership. By 1994, productivity of farms had increased rapidly, becoming more than half of GDP in that year⁷.

Summary of the Law: Land was distributed without charge to families and individuals by means of Land Commissions in each of the 36 districts into which the country is divided. Property rights were given by issuance of a document known as a "*tapi*." It transferred most of the rights of ownership, but not the right to sell. However, parcels could be leased, even to foreigners, according to criteria established by the Council of Ministers. In mountainous areas where the land allocated would be unable to sustain a family, various social assistance programs were to be established by the Council of Ministers. The law states that the District Land Commissions are to base their allocations on documentation provided by Village Land Commissions, so that allocations would reflect the needs of individual families. The "*tapi*" was to be registered in land survey ("cadastre") offices. Environmental protection was included by the provision that industrial and mineral refuse and water with a chemical content harmful to agriculture must be channeled and gathered in special places to prevent water pollution and to protect the life of people, animals and birds. Overall administration of this law was under the Ministry of Agriculture and Food, with policies set by the Council of Ministers.

Comments: This is probably the most important single piece of privatization legislation. It is closely related to two subsequent laws: The Law on the Registration of Immovable Property, which permits "*tapis*" to be registered in the new system, upon which the title becomes fully transferable. The Law on Restitution, which specifies that "*tapi*" land is not subject to rights of restitution (see discussion below). The law also led to the creation of a new category of land: "refused land" where "*tapis*" were offered, but persons refused to accept them because the land involved was so mountainous or undesirable that it was considered more of a burden than an asset.

It should also be noted that in practice this law basically applied only to land that had been held by "cooperatives," a form of collective ownership required in the communist era. The communist state also expropriated agricultural land for "state enterprises," and this land is still owned by the state, except to the degree that it has disposed of it since 1992. This land, and the "refused" land, can be used for restitution, see below. State enterprise land is not extensive (although exact data was not obtained), and in these days is usually allocated to farmers to use without charge, but without any rights of tenure (the state can reclaim at any time).

The distribution of agriculture land in Albania to families working it in 1991 was different from Rumania and some other ex-communist states, in which ex-owners were given priority (for up to 10 hectares) and current occupants were displaced. As will be discussed below, the egalitarian Albanian approach has led to some serious problems.

In addition, it is worth remembering that there are rural areas of Albania in which customary law and clan-based rights still prevail.

Law on the Privatization of State Housing No. 7552, 23 December 1992

⁷ MOLA report, Sec. 2.3.3.

Background: During the communist era (1994-1990), almost all new urban housing was in the form of 4-5 story multi-unit blocks. For example, in Tirana these comprise about 55.6% of all real estate properties⁸. In 1991, it was decided that these could be quickly privatized.

Summary of the law: Rights of ownership were given to the occupants who had contracts of rent to the state as of December 1, 1992. Units of one room and a kitchen, or two rooms and a kitchen were transferred free of charge, others required some payment. Ownership rights were distributed to adults (18 and over) actually living in the unit -- a practice that has caused later problems of inheritance since family members under 17 at the time would have less property unless adjustments are made. No person was permitted to receive two or more units. The details of the program were administered under the guidance of the Council of Ministers.

Comments: For many urban families this law created an immediate family asset, which can be occupied, rented, or sold as payment toward a new private house or other purpose. The law did not, however, provide rules for organizing a condominium association, so that owners have had to create their own agreements to deal with the maintenance of common areas. Apparently a law covering this subject was passed and then repealed. Most owners have been making informal arrangements for cleaning, but problems will arise when decisions about major repairs must be made.

Law on the Restitution and Compensation of Properties to Ex-Owners.

No. 7698, 15 April 1993.

See also, Instruction of the Council of Ministers on the Implementation of the Law,
21 June 1993.

Background: In April 1993, the Government of Albania decided to "recognize the right of ownership to the ex-owners or their heirs (to) properties that have been nationalized or illegally taken by the state," after the communists took power in 1944. (Quotation from the English translation of the law.) Persons who stand to benefit from this legislation have been active politically, and there currently is pressure to have restitution rights incorporated into the new constitution that will be coming to a parliamentary vote in the fall, and a referendum vote on November 28.

Restitution may be considered in three categories:

- (1) Ex-owners of urban land. If part of the urban land owned in 1944 is still unoccupied (not built upon in the interim), the ex-owner will receive ownership of the unoccupied part. This might be a vacant lot, or the front yard of a building constructed in the communist era. Table 3 of Emerging Uses ... in Tirana points out that 64.4% of the properties in the city were constructed in that period..

Today the skyline of Tirana is punctuated by randomly located "spikes" of relatively high rise buildings under construction. It may be that some of these are the result of persons who have received restitution rights to small areas, and who are attempting to exploit it

⁸ See Caro, Luli, Puka, Childress and Moores, Emerging Uses of the Urban Landscape in Tirana, Albania, June 1998.

while there is still no effective zoning system in place. This, however, is only a hypothesis.

If the ex-owner had land with a house that became occupied by others during the communist era, he/she may collect rent for three years, after which full ownership will be restored. Occupants displaced after three years have priority to new state housing, but it is not clear that much, if any, state housing has actually been built since 1993.

When ex-urban owners can not be fully compensated by the above methods, they may be given agricultural land still owned by the state -- but only in the same district in which they had owned the urban land. They also may be given cash (not fiscally possible for the government) or bonds (which are not acceptable to the ex-owners). The final, and by far most significant, option is that ex-owners may be compensated by property rights in areas declared to be for tourist development, but this mechanism is not yet active.

The writer of this report has been told that, aside for some cases still in the court system, the re-allocation of urban immovable property is now almost complete, although a high percentage of ex-urban owners still have additional claims based on fact that what they have been allocated is not full compensation. It has not been possible in the time available to get statistics. Interviews with Albanian members of the PMU indicate many in fact do personally have such uncompensated claims, which they hope to obtain as rights in tourist areas.

The report on Emerging Uses ... in Tirana notes that the state still owns 47% of the surface area of Tirana (Table 14), but this includes streets, parks, and all state offices and other essential institutions. Data has not been found on how much, if any, of this could be used for restitution.

- (2) Ex-owners of agricultural land. Since most agricultural land was allocated to occupants under the "*tapi*" system, to which restitution rights do not apply, ex-owners of agricultural land can be restituted only with agricultural land from land still owned by the state (ex-state enterprise land and refused land). The amount of such state land which it would be feasible to use for restitution is probably small compared to the potential claims on it, although exact data could not be found in the short time period of this visit. It appears that many ex-owners of agricultural land must therefore use the alternatives: cash (of which the government has little), bonds (which no one wants), urban land (which has been almost fully allocated to ex-urban owners), or rights in tourist areas (which have not yet been defined). In 1944 Albania had many large landowners. As just described no easy solution to their theoretical rights to restitution appears as yet to have been found. This is probably the source of the political tension that still surrounds restitution as noted earlier.
- (3) Ex-owners of forest and pasture land: These apparently have received complete restitution without major problems.

In summary, it is clear that the restitution law has created a new class of ownership "parallel" so to speak to other claims of ownership now existing in the Albanian legal system. Cases have already arisen in the new registries in which one applicant has a claim to a parcel based on a *tapi*

issued by a District Land Commission, and another has a claim to the same parcel based on a restitution decision by a District Restitution Commission, even though this would appear to be legally inconsistent. A number of persons have commented that restitution committees are not always thorough in their title searches before assigning restitution rights, creating the potential conflicts between the two sources of property rights (rights through the conventional system and rights flowing from the restitution system).

The sequencing of the laws was certainly not ideal. In theory the rights of restitution should have been settled before a general distribution of other immovable property took place. However, practical considerations made this impossible.

Summary of the law and the instructions for its application: Restitution applies to all forms of immovable property, except immovable property treated by the Law on the Land (Art. 2 and 4.1), that is: the "tapi" land, as summarized above. However, restitution can be given for building "sites" (see discussion below), and other agricultural and non-agricultural land. Compensation is, however, limited to 5,000 to 10,000 square meters (one-half to one hectare), although if one previously owned up to 100,000 square meters, 10% more can be added for each meter over 10,000. If more than 100,000 square meters had been owned, 1% can be added. Owners who have been compensated will not be compensated again, but may go to court to adjust their previous compensation for inflation. Buildings still existing are given back, but if used for public purposes, may be rented by the state for three years -- this apparently applies to state provided housing (see discussion above). Where the buildings have been "alienated" (sold or transferred) to a third party, priority is given to the ex-owner, and the state must compensate the third party being displaced. Where ex-private property was improved during its occupancy by the state, the ex-owners is entitled to receive the improvements up to 20% of the building's value, without payment. (In other words, an ex-owner might get a "windfall.") For improvements of 20-50%, the ex-owner must pay the value over 20%. Over 50% improvements result in the ex-owner and the state becoming co-owners. Where ex-owners owned building sites (see discussion below) they are entitled to compensation in state bonds, other building sites, or equivalent land in tourist zones. Where the state has built shops or workshops on ex-owners sites, ex-owners have a right to buy them as part of the privatization. Persons who cannot profit from restitution include the ex-king, ex-collaborators with fascist occupiers, and ex-leaders of the communist party who obtained the property by abuse of their position. Appeals to the courts of decisions of restitution committees are provided for.

Two months after passage of the law, the Council of Ministers adopted an extensive set of "Instructions" on how to apply it. It contains many clarifying definitions, provided a system for calculating depreciation on building, for indexing land values, and dealt with other technical issues. Compensation for land in urban centers or tourist areas is limited to 5,000 square meters instead of the 10,000 permitted in other areas. Documents necessary for claims are listed, procedures are defined, and actual examples of calculations are given.

Other modifications were made by Law No.8084, of 7 March 1996, which stated, among other things that restitution rights to land in tourist areas would be done in two phases, with a maximum of 5,000 square meters to be given in the first phase. Decree No. 1489, 16 May 1996, also made minor changes. In addition, there is continuing debate over constitutional provisions.

Comments: This report could not explore all the details of this necessarily complex legislation. The main points appear to be (a) that it is drafted to be generous to ex-owners, although it does contain limits to prevent the re-establishment of the very large agricultural land holdings that existed in pre-1994 Albania. (b) As noted above, in spite of its inherent complexity, it is said to have been largely carried out in urban areas. (c) With respect to agricultural land it is not clear that there is a "reservoir" of state land adequate to satisfy all remaining outstanding claims. (d) Most important of all, rights to tourist land are the restitution rights of last resort. Since the other categories (same property, similar property, cash, bonds, then land in tourist areas) appear to be often inadequate, the system tends to "default" to tourist lands. See further discussion below.

This critical issue of future control of tourist areas is still unresolved. Future policy decisions will undoubtedly occur in a highly charged political atmosphere. In the meanwhile, unfulfilled restitution rights appear to be a "cloud" (uncertainty) over other ownership rights in state owned agricultural land and potential tourist areas. This uncertainty will be increased where ex-owners exercise their rights to litigation in the slowly moving judicial system.

A fully dynamic and liquid market in immovable property will obviously not exist until the restitution process is completed.

Law on the Development of Priority Areas Concerning Tourism. No. 7665, 21 January 1993

Background: Albania obviously has a great potential for tourism as a major source of employment and foreign exchange. Both its beaches and its mountains offer many opportunities for tourist development, and it also has lakes. It is a short distance by air from the rest of Europe, and its Muslim identity may make attractive to emerging middle classes in Turkey and the Middle East. The over development and/or pollution of much of the other Mediterranean seacoast will work in its favor. Unfortunately, it appears that some beaches are already being illegally developed, and others may be subject to distribution as restitution (see above). It is said that illegal beach developments now include a whole village, complete with offerings of room to rent, bed-and-breakfast rooms, restaurants and small commercial areas (convenience shops). It seems evident that tourism potential is a natural asset that must be better planned and protected. In 1993, legislation to promote and subsidize tourism was passed.

The law permits foreign investors in authorized projects to be released from certain types of foreign exchange controls, to be excluded from certain taxes, including zero tax on profits for the first five years, and 50% for the next five. Losses in the first five years can be carried forward to offset the calculation of profit in the next five years. Foreigners may be employed, but with an increasing proportion of Albanians in subsequent years. There are safeguards requiring that proposed investments be made within certain time periods. Tourist areas are to be leased for an initial period of 25 years, with two possible 5-year extensions, and a final 24 year extension. Subsidies in foreign convertible currency may be negotiated for up to 25% of the cost of building houses in the project, and up to 20% for other purposes, with lower percentage limits on larger projects. The subsidy system may be modified by the Minister of Commerce and Tourism, but not in a way to negatively affect rights already committed. The tourism law also applies to constructing or re-constructing hotels in urban areas. It should be noted that this is a more clearly drafted and/or translated piece of legislation than the others reviewed here.

Comments: Albania appears to have taken the first necessary legal steps toward stimulating tourism. The reality has, of course, been frustrated by violence in Bosnia and Kosovo, and the 1997 breakdown of civil order. Another issue is that if the state loses control of the situation there may be less and less state land in tourist areas to satisfy rights generated by the restitution law. Moreover, since illegal occupation of land normally takes over the best sites first, foreign tourist investment will be less attracted to Albania, or perhaps demand even greater subsidies. One can already see the rapid occupation of the great public parks that once graced the center of Tirana -- a lack of state control over land literally in its own backyard.

Law on Buying and Selling of Building Sites, Law 7980, 27 July 1995

The law of Albania recognizes building sites as ownership rights that can be separated from the surrounding parcel. For example, if an owner of 2000 square meters of agricultural land wishes to build a house, he/she should apply to the local or district urban control department. It may approve, for example, a building site of 200 square meters, with permission for a house with a 100 square meter "footprint." In this case the 200 square meter area would no longer be agricultural land, but a residential "building site" which may be bought and sold separately from the agricultural parcel on which it is located, provided that servitudes are obtained to pass over the agricultural land to reach the building site (residence). Two different "kartelas" are created for what had been one parcel, and a third person is able to buy the 300 m² of the "building site" and its building without having to buy the remainder of the parcel, which is still designated for agricultural use. This is, in fact, quite an important and active category of ownership.

Law on Leasing Agricultural Land, Forest Land, Meadows and Pastures, which are State Property (adopted in 1998, number and date not available)

This law deals with leasing state land to Albanians or foreigners: for up to 10 years for field crops and edible oils, up to 30 years for animal products, "protected environments," and the production of saplings and low forests, and up to 99 years for the tourism, recreation, high forests, and fruit trees. It is obviously another attempt to increase food production and to promote tourist activity.

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There are, of course, many other laws regarding property rights, but there has not been sufficient time for their analysis.

I.B.2. The Situation in Albania with Respect to Land Registration.

The institutions regarding land registration in Albania are already covered in Working Paper No. 1, already cited, in the MOLA report, already cited, and in other publications of the Land Tenure Center, and other reports prepared for the land markets project.

I.B.3. The Situation in Albania with respect to Land Use Controls and Urban Planning

The last comprehensive plan for Tirana (and presumably other cities) was made 1989, in the communist era. Current development is "chaotic" and there appears to be no regard for land zoning controls⁹. Moreover, there appears to be no planning for the almost 50% of the city that is state owned.

According to the director of the national office of territorial adjustment (roughly, town and country planning) in the Ministry of Construction, major efforts are already under way to remedy this situation. A special Council for Territorial Adjustment has been in operation for more than a year. Headed by the Prime Minister, with Director of Town Planning as its secretary, this council also includes the Minister of Public Works and Transport (vice-chair), the Minister of Commerce and Tourism, the Minister of Agriculture and Food, the Minister of Public Economy and Privatization, the Secretary of Local Government, the Chief of the Commission to Protect the Environment, a representative of the Academy of Sciences, the Minister of Defense, and the Minister of Justice --an excellent representation of all organizations concerned with land use planning at the national level. Three meetings have been held in the past year, with the Prime Minister personally presiding. This Council appears to have set itself two tasks: (1) setting the framework for devolving a maximum amount of planning powers to the local level (following a world-wide trend), and (2) presenting a comprehensive package of enabling legislation to Parliament to re-establish a master planning and land use regulatory system for the country. (A draft of this package has already been translated into English by the PMU.

Ideally, the new system will create national studies and guidelines to provide a framework for local decisions in critical areas, such as "tourist villages," large industrial parks, suburban growth areas, etc. It will address the question of the "yellow line" (designation of the limits of urban uses in major cities) by creating three categories of the quality of agricultural land, presumably making it easier for urbanization (the yellow line) to be extended in the lowest category rather than the highest. (As in all countries, conversion of prime agricultural land has been a serious problem.

A special study is being done to propose a set of plans and controls for a "development corridor" along the road from Tirana to Dures -- clearly one of most immediate targets of current market forces. However, in this, as with all planning, implementation will be complicated by "overhanging" restitution claims to both state and private lands, as discussed above.

The new proposals also contain tough measures to prevent illegal occupation of land. (1) The new occupants will be designated as "illegal", and not be permitted to enter the registry, and if the land is taken for public purposes (for example, a road) no compensation will be given. (2) Any illegal construction that prevents the realization of a plan, or threatens to interfere with future public functions for the land, will be demolished without compensation. (The exact meaning of this sentence is obviously not completely clear, but its general sense is.) However, the Council that has prepared these proposals are not sure that the Parliament will accept its more Draconian proposals.

⁹ Emerging Uses...in Tirana, p23.

In the case of the major invasions of public beach land occurring at places like Durrës, it is admitted that the authorities are "mediating" the claims of those who are (self) proclaiming restitution rights to occupy the beach, rather than "enforcing" the state's ownership. (In other words, if our understanding is correct, some degree of legitimacy is already being conceded.)

As in many other parts of this report, this problem can only be identified. A definitive discussion would require more study and time.

One observation that can be made is that if the current package of proposals does indeed become law, it will still take time for new studies and plans to be prepared and mechanisms of enforcement to be put into actual operation. The package wisely also includes the hiring of additional professional personnel as one of its components. This might be an area in which foreign technical assistance might be useful. Time is obviously "of the essence" since in the current permissive environment, the market is quite rapidly committing land to uses and densities that may be undesirable in long range. As also argued in the Emerging Uses report, the problem is urgent.

I.B.4 The Situation in Albania with Respect to Banking and Credit Institutions to Support a Dynamic Market in Immovable Property

As discussed earlier, in all modern countries, mortgages and other forms of financing are central to the operation of immovable property markets. In the United States, "putting together the financing package" is generally the single most important part of most commercial real estate transactions. Even at the level of the individual house, access to credit and rates of interest directly determine the quality of housing a family can afford. This has proven to be even more true in developing countries, in which it has been shown again and again that a sure way to increase affordable housing is to improve the terms of credit, principally by lowering down payments and dramatically increasing the time for repayment, thus putting monthly costs within the reach of greatly increased numbers of people.

The current situation in Albania is quite unusual in that it is obvious that fairly large amounts of capital are available for many types and intensity of construction even though capital from banks for this purpose is virtually non-existent. The reasons for this appear to be that Albania has an unusually high per capita flow of remittances (estimated by a U.S. Treasury consultant as possibly being as much as US\$500 million per year). It is also rumored to be a current international center for organized illegal activities. Capital may also be mobilized from internal corruption, but of course this is money that it already in the economy. It is worth noting that a credit system that is based primarily on remittances is an inherently unfair system, giving access to housing and other immovable property only to those who have a source of remittances.

Not without reason, Albanians who do have access to capital currently regard immovable property as one of the most secure ways of investing it. Therefore, for the time being, there is no need for banks, which normally mobilize many small deposits and savings to capitalize "one-time" family mortgages, and finance commercial building.

However, in the longer time frame -- perhaps five years and after -- the Albanian economy will have presumably matured, making other investments more attractive, and restoring people's

faith in the possibility of more orderly economy. As this occurs, the Albanian economy will begin more and more to resemble the economies of other European countries, as will its banking system. The Albanian Daily News of 16 September 1998 notes that accounts in savings banks are growing, p. 7.

The Technical Assistance Program of the U.S. Department of the Treasury currently has U.S. experts in residence in Albania working with the Ministry of Finance, to assist in the privatization of the public banking system. However, their priorities are to assist in the creation of banking functions other than mortgage lending. One of these advisors, noted that even if banks have capital, the legal/institutional framework of Albania is inhospitable to mortgage lending. The only collateral acceptable for a new house is ownership of an existing house. There are no foreclosure laws. To recover a bank must engage in a full legal action to obtain a judicial determination as to whether it is now truly the owner. In some 400 cases brought by banks in recent years, only 20 have come to judgment. If the bank wins, the property is auctioned. However, in fact there tend to be few bidders for two reasons (a) in a society in which arms are widely distributed, people are often not anxious to move into a house that was formerly the home of another family, and (b) legislation for the prevention of homelessness provides that one room must be left for use by the former occupants. This forces even banks that have won their lengthy litigations to become landlords in the rental market, with all of the headaches that being a landlord invariably implies.

In Albania, as in many other countries, a mortgage system cannot be created until legislation for realistic and speedy foreclosures is adopted.

The numerous private banks observable in the center of Tirana are largely engaged in giving credit for the commercial activities of their own nationals. Some donor countries and some private non-profit organizations are providing small and medium industrial loans on favorable credit terms. In housing, the Catholic Archdiocese of Boston has committed to assisting the financing of about 100 affordable units in six Albanian cities.

I.B.5. The Situation in Albania with respect to Illegal Urbanization

As noted above, Albania appears to have serious problems of illegal subdivisions and occupation of state land in three categories: (1) illegal housing subdivisions, and (2) illegal occupancy and building on park land in cities, and (3) the construction of houses, hotels, rooming houses, cafes, restaurants, etc. on beaches and other touristic locations. In the center of Tirana, park land critical to the beauty and character of the capital is rapidly and irrevocably disappearing. Although much of the park occupation is theoretically in "temporary" buildings, it is clear from international experience that will be very difficult or impossible to remove such buildings and to restore the greenery. The writer has heard that much of this began with a mayor of Tirana who was generous in giving approvals (without any legal foundation) for these purposes.

The first category -- illegal housing -- is a special problem to which there is no easy solution. It is particularly intractable in Albania because of potential access to arms to defend property. It is said that personnel for the registration project are unwilling even to collect data in such areas because of threats to physical safety.

What is to be done about this problem is beyond the scope of this report, and is obviously far from being a merely technical problem. However, it should be "kept on the agenda" if only because it is a problem that only becomes worse, as increased numbers of persons in this class become ever more politically significant. Recently a technical advisor from the Housing and Urbanization Unit (a consulting organization) of the Harvard Graduate School of Design recently had his service terminated on the grounds that "the problem had moved from technical issues to implementation."

Of immediate and greater economic importance is protection of what are surely some of Albania's greatest economic assets: its beaches, mountains and lakes. (See discussion above.) It has not been possible to explore this matter in any detail -- possibly it should be the subject of a special mission -- but it is very clear that problem is already quite serious on the beaches near Dures. A short photographic supplement illustrating this point is presented as Appendix 1 of this report

Three factors should be kept in mind:

1. International experience shows that invaders of public land normally have an excellent sense of market values, and generally first occupy those areas which have the highest future values, and, correspondingly, are greater losses when lost to public ownership and control.
2. The occupations taking place near Dures are far from casual. One investment of US\$ 200,000 has already been made, and other quite large multi-storey buildings are rapidly being erected.
3. The situation in Albania is complicated by the "overhang" of rights to tourist sites that has been described above. The registrar for the Dures district said that some of the persons building on the public beach claim that they are doing a "self-help" exercise of their restitution rights that have not yet been honored by the government. However far-fetched this may be, there is little doubt that the legislation terms of restitution will clearly complicate the disposition of all touristically valuable lands.

As indicated in the Summary to this report, in the opinion of this writer, immediate action must be taken to control the situation. One ray of hope is that it is reported that in the Golem beach area of Kavje District, which immediately adjoins Dures, 80% of development has been legitimate.

Prohibiting access to the new registry, and thus denying rights of ownership and of transfer, could obviously be one tool to deal with this problem -- if potential occupiers know that the new registry system exists and that its actions have major economic consequences.

However, the specifics of policies and actions on this matter should not be made without careful consideration, since the economic and political stakes are unquestionably high. This writer urges the project and USAID to give immediate consideration to question of whether they might play any constructive role in these matters. At stake is the fundamental amenity and character of major Albanian cities and the orderly and optimal development of the national

tourist potential. (The current disorderly private invasion will, of course, produce some tourist income and employment. However, they do not make optimal use of the land, lack amenities, are not designed with the standards of foreign tourists in mind, and will grossly devalue the potential that could be achieved from well planned and controlled development.)

PART II

The terms of reference call for a review of the types of rights and responsibilities in immovable property that have been created by various privatization programs. To the extent possible on a mission of this length, this has been covered in Part I, above.

PART III

The terms of reference call for a discussion of "redefining the meaning of land ownership beyond that of the right to sell and the right to use, to include the sustainable use of land resources." This language may refer to the recent trend in Albania to devolve control of some pasture lands and forests to local communities. The issue is whether this form of common ownership will lead to the "tragedy of the commons," in which each individual acting for himself will lead to the destruction of the common asset. On the other hand, Albania has a tradition of village elders and other customary rural institutions that may be quite capable handling such problems. Time did not permit any investigation of this subject.

On the broader issue of making the concept of "stewardship" a part of ownership that would somehow be enforced through the registry system would seem to be premature in Albania at this time. The country has a Commission to Protect the Environment -- the effectiveness of which was not evaluated. The experience of the U.S. and Europe seems to be that building "environmental consciousness" is a long process (Earth Day was 28 years ago). Certainly this is a matter to be kept on the agenda, but time did not permit its coverage in this report.

SUMMARY AND CONCLUSIONS

1. The Albanian Land Market Action Plan approved by the government in 1993, and the Immovable Property Registration System that has resulted from it, have been significant achievements in spite of the difficult context of work in a transitional economy, and the breakdown of civil order in 1997.
2. The pre-existing system of recording documents related to immovable property rights is unsuited to a country that hopefully will soon move into modern economy. In spite of initial start-up costs and difficulties, the investments now being made in it will surely have major payoffs in the many future decades in which the new system will operate. Computerization will no doubt be necessary, but the new system should not be difficult to convert. (Work is already under way for eventual conversion to GIS.)
3. The transparency of the system and the amount of information that will become easily accessible to buyers, sellers, lessors, lessees, mortgage holders, and others should make a major contribution to conditions in which the market can perform well in efficiently allocating resources. It should be attractive to foreign investment, and will help to level the playing field among large and small actors in the real estate market. It is also more resistant to tampering.
4. Countries up-dating their registration systems have essentially two choices: to slowly replace the old with the new (apparently in Austria this has already taken 50 years), or to make on "big push" to convert totally in a few years, working out problems as they arise. Since the old Albanian system was only revived in 1991, the country is in a good position to take the latter course, before the inertia of the old could be re-established. This choice might be an interesting topic for discussion at the September meeting of the Meeting of Land Administration Official (MOLA) in Tirana.
5. The July 1998 MOLA outlined a number of possible improvements in the current program that need not be repeated here. However, one point striking to this writer was that efforts have been so intensively focused on practical operational issues that there has been a neglect a sense of "public relations" (used in the best sense). Over and over again, officials, technical assistance persons, and Albanians participating in the immovable property market were unaware of the new registration system, and its implications. (In the Lushnje district some persons have suspected it of being a covert move toward new taxation.) Adequate attention has not been give to publicizing the new system, explaining its functions and relation to the existing system, and identifying the locations of offices and making them easily accessible to the public. This is not a "fringe" issue, but one that will take some investment of human and fiscal resources to do well.
6. The main focus to this report is not, however, to review the IMPRS, but to (1) analyze associated institutions essential to the creation of a dynamic and efficient market; (2) review the types of rights and responsibilities created by privatization programs since 1991; and (3) comment on the introduction of the concept of "sustainable use." Items (1) and (2) have been combined into the main body of the report, which discusses five sets of related institutions essential to a well-functioning market: (1) creation of adequate categories of ownership, (2) land registration system (very briefly because covered by MOLA and other reports), (3) an efficient

land use control and planning system, (4) institutions of credit for immovable property transactions, and (5) institutions to deal with problems of illegal urbanization. (Creation of important auxiliary services such as real estate brokers, notary services, etc. are being covered by others.)

7. In addition three pressing substantive problems have been identified and discussed. These are: (1) the creation, by the Albanian system of restitution, of an apparently large pool of legal immovable property rights that are not yet connected to parcel of land; (2) the widespread and blatant illegal occupation and urbanization of state land, which, among many other things, complicates the solution to the first problem; and (3) the lack of urban and rural long-range land use planning and the virtual breakdown of land use controls, leading to chaotic urban development and uncontrolled building in the countryside.

9. Albania has had a distribution and restitution system (restoring rights to immovable property to those who expropriated during the communist era) that has simultaneously attempted to give agricultural land to those who worked it in 1991; give ownership the those renting state apartment units in 1992, and provide generous restitution to ex-owners of agricultural, urban, and pasture/forest land. In simplified terms, there was not enough immovable property to immediately satisfy all of these goals. The result has been the creation of a large pool of property claims arising from the restitution system that still has not been connected to a parcel of land and thus constitutes an "overhang" over all property still owned by the state.

10. In terms of employment, foreign exchange generation, and general economic development, some of the most valuable land owned by the Albanian state is at beaches, lakes, and mountains with high tourist appeal. However, the end product of the restitution system is to give a large number (the exact amount could be found) of property rights to precisely the same (tourist) land. The state's best land resource has thus been "made hostage" to its restitution system. Or, to put the matter in another way, one scenario of the current legislative situation is that as considerable amount tourism development will not be on state land, but on land subject to claims to land owned by the many persons who have unfulfilled restitution claims.

11. Complicating the situation is the fact that many of these identical lands (with high tourist appeal) are being illegally invaded and developed by persons taking advantage of the virtual breakdown of land use controls. These occupations have a double negative effect: they convert very valuable public assets to their own profit and at the same time reduce the pool from which restitution claims can be settled.

12. Illegal development has at least three aspects: (a) illegal housing developments in major cities, (b) the occupation of central city parks, and, by far most serious economically, (c) the illegal occupation and development of one of Albania's greatest economic assets -- the sites for potential tourism. In some areas, at least, the destruction (or de-valuation) of the latter is proceeding at a very rapid rate.

13. All of the three problem areas just outlined are highly politicized, and therefore not susceptible to purely technical solutions. On the other hand, all are related to land registration and its associated issues upon which the project is already working. This limited mission and report have concentrated on the identification of major problems related to immovable property

rights in Albania. It does not recommend what specific actions should be taken by the Land Action Project, Land Tenure Center, or USAID in response. Others are more qualified to make such recommendations on the basis of what has been identified in this report.

14. Various other comments are made in the body of the report that it would be unduly repetitious to summarize them here.

15. This report has only an extremely brief discussion of the concept of "sustainable use" in Albania.