

# THE EVOLUTION OF IMMOVABLE PROPERTY REGISTRATION IN ALBANIA

by

J. David Stanfield and Sonila Jazo<sup>1</sup>

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<sup>1</sup> Respectively the President of Terra Institute, 10900 Stanfield Road, Blue Mounds, Wisconsin 53517, USA, <http://www.terrainstitute.org>. Email: [jdstanfi@wisc.edu](mailto:jdstanfi@wisc.edu), and Deputy Registrar of the IRPO, Tirana, email: Sonila Jazo <[sjazo@yahoo.com](mailto:sjazo@yahoo.com)>

<b>Contents</b>	<b>Page</b>
<b>1. Land Management and Land Administration in Transition</b>	<b>1</b>
1.1 Land Administration in Albania prior to 1991	1
1.2 The Origins of a New Land Registration System	2
1.3 How to create the new IPRO	7
<b>2. The Results of the Land and Building Privatization Experience</b>	<b>9</b>
<b>3. Immovable Property Registration in Albania: Core Concepts</b>	<b>10</b>
3.1 Main Concepts of the IPRO	11
3.2 Logic of the Registration System	11
3.2.1 Five Principles of the IPRO	11
3.2.2 Organizational Features of the IPRO in Albania	12
3.2.3 Parallel Registry for Deeds—The Ipoteka	14
3.3 IPRO as an Information System	15
3.4 Computers in the IPRO	18
3.5 Computers in the Ipoteka Section	19
<b>4. Reflections on the Experiences with the IPRO</b>	<b>19</b>
4.1 Registration Local Office Staff – Training and Professionalism	20
4.2 From Facilitation Fees to False Documents in the Registration Local Offices	20
4.3 Passive Notaries	20
4.4 Special Registration Fees and Degradation of Records	20
4.5 Technical Degradation	21
4.6 Informal Transactions	21
4.7 Absence of Compensation for Damages Due to Errors in IPRO Information	22
4.8 Decline in the Capacity to Coordinate Investments in a National Action Plan	22
<b>5. Reassessment of Options</b>	<b>23</b>
5.1 First Registration	23
5.2 IPRO Improvements	24
5.3 Indicators of Need for a Radical Restructuring of the IPRO	27
5.3.1. Leadership	27
5.3.2 Public Support to the IPRO	28
5.4 Implications	28
5.4.1 Link Property Records with Property Taxation	29
5.4.2 Multi-purpose Local Government Document Administration Offices	29
5.4.3 Notary Based Registration	30
<b>6. Conclusions</b>	<b>30</b>
<b>Annex 1: Problems of the IPRO as Identified in the 2006 Modernization Strategy</b>	<b>31</b>
<b>Annex 2: Amendments of Law 7843</b>	<b>32</b>

## Tables and Figures

<b>Table 1: Estimate of Number and Types of Immovable Properties as of the end of December 2000 .....</b>	<b>10</b>
<b>Figure 1. Information System for IPRO: Parallel Paper Based and Digital Backup (initially) .....</b>	<b>17</b>

# THE EVOLUTION OF IMMOVABLE PROPERTY REGISTRATION SYSTEM IN ALBANIA

## 1. LAND MANAGEMENT AND LAND ADMINISTRATION IN TRANSITION

Since the late 1980's, a massive transformation of land management is occurring in Eastern Europe and Eurasia. Prior to 1989, State institutions were responsible for the management of land, that is, State agencies made the decisions about how to use the land and about who would profit from that use. In property terms, the State owned most of the land and buildings in most socialist countries in the sense of controlling who got access for their use. After the sometimes violent turmoil accompanying regime changes in the late 1980's, with the shift to private land and building ownership through privatization policies and programs, the management of significant proportions of land and buildings became the responsibility of the private owners.

### 1.1 LAND ADMINISTRATION IN ALBANIA PRIOR TO 1991

The Albanian experience illustrates how the institutions of land administration had to be re-defined. In Western market economies, special institutions to deal with the identification of "true owners" have existed for hundreds of years, but in the completely "socialized" countries as was nearly the case in Albania after 1975, there was no use of such entities, since land and buildings were not privately owned. Land administration agencies registered the use of properties such as land and buildings for the state users (different ministries and institutions), or private occupiers, such as apartments and houses. In Albania, there were Housing Entities which kept records about occupancy of apartments, but not about houses which were more typical in villages. For rural, village properties the cooperatives and state farms maintained records about the allocation of housing plots which people used to build or improve their houses. The local Cadastral Offices maintained records about what land was assigned to the agricultural use of the cooperatives and state farms. Other enterprises such as mining and forestry enterprises, maintained records of the location and use of land parcels and other fixed assets managed by those enterprises.

But even during the "socializing" period of property ownership following World War II, land administration institutions from the previous political economic model continued to operate, such as the "Ipoteka" offices in most cities which recorded deeds of sale when sales were allowed, as well as deeds of mortgage and inheritance arrangements when these transactions occurred. In the 1920's, Albanians had adopted the French institution of "Ipoteka" offices, which recorded deeds of mortgage and sale and inheritance documents pertaining to land, houses, and businesses, but only for the main urban areas of the country. The network of Cadastral Offices inherited in Albania from the Ottoman Empire handled the registration of transactions involving rural properties. Following the expulsion of the Germans after WWII, and the installation of a revolutionary regime with the aim of socializing the political economy of Albania, for several decades the Ipoteka offices continued to be the depositories of deeds of sale and inheritances more or less as they had functioned prior to 1948. Similarly, the Cadastral Offices recorded the results of the 1948 land reforms which distributed much of the agricultural lands previously held by the large landowners to the peasantry.

Following the adoption of the 1975 Constitution in Albania, which recognized only State and collective ownership of land and buildings, the Ipoteka offices gradually closed. The cadastral offices had already shifted from the recording of rights to land, to recording of the uses of agricultural land in support of the collective agricultural enterprises established after 1950.

With the end of private property in 1975, there was no reason to keep the Ipoteka offices open, and the last one, in Tirana, was closed in 1980.

After the violent fall of the regime in Romania, Albanians decided to make the transition to a market oriented political economy, based on the private ownership of land and buildings. Private ownership rights include the right of the owners to sell their properties to other private persons through contractual agreements between buyers and sellers. Markets in land linked to markets in capital and labor are central to market economies. Land markets in the market oriented economies are important mechanisms for deciding who has access to land and how the land is used, instead of the planned political economy's State institutions which has exercised these functions for previous decades.

As the management of land becomes privatized, the institutions of land administration (understood as the processes of recording and disseminating information about the ownership, use and value of land<sup>2</sup>) must also change from serving the needs of State agencies, to serving the needs of private managers of land.

## **1.2 THE ORIGINS OF A NEW LAND REGISTRATION SYSTEM**

Privatization of land and buildings does not happen overnight. Land of different types have different requirements for shifting into private ownership, according to the policies of the transition. In Albania, the privatization of immovable property was carried out through a variety of programs, including: (1) the distribution of the ex-cooperative agricultural land to rural households, mostly in 1991 and 1992; (2) the distribution of ex-state farm land also to households, approved in November, 1992; (3) the sale of business sites mostly in 1991-92 to individual owners; (4) the sale of housing units in state constructed apartment buildings to adult residents begun in 1993; (5) the restitution of mostly urban properties to their owners prior to state acquisition, or to their heirs, also begun in 1993; (6) the privatization of enterprises; (7) transfer of artist studios to their artist occupants in ownership.

De facto privatization of agricultural land began in 1990, as rural people began taking land previously managed by cooperatives. In order to give this process a measure of legality, the provisional government approved the Law On Land in July, 1991 which described how the collectives' lands would be privatized. The Cadastral Offices assisted Village Commissions with the distribution of agricultural land to farm families in ownership in most cases, but also in use for certain classes of land and holders, and the issuance of allotment certificates (*tapis*). The Cadastral Offices kept copies of these certificates and lists of the beneficiaries in some instances.

At that same time, municipalities and other state agencies began the privatization of retail commercial spaces and in 1993 began the privatization of state owned apartments. The privatization documents produced in these programs were deposited and recorded in the newly re-

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<sup>2</sup>This definition is used in the United Nations Economic Commission for Europe, Land Administration Guidelines, New York and Geneva, 1996, p., 6.

opened Ipoteka offices, but privatization documents pertaining to agricultural land were stored in the District Cadastral Offices.

One issue facing Albania in the midst of its privatization phase, was how to administer the information about ownership and other rights to land and buildings as property markets began to function, and as ownership changed over time. One option was for the Ipoteka offices to be the repository of documents pertaining to urban property transactions, and for the Cadastral Offices to operate similarly for rural properties, as they had operated during the pre-War and much of the post-War periods. Another option was for the Ipoteka offices to be the official depository of all initial privatizations, as well as for subsequently produced deeds of sale, mortgage, gift, and inheritance for urban and rural properties, assuming these functions from the Cadastral Offices for rural properties.

Neither of these options included a comprehensive map of properties, a “cadaster” in the European tradition. The searching of transaction document archives in an essentially deeds registration system to establish “chains of title” also was thought to be time consuming and expensive.

In Albania, as in other transition countries, privatization assumed a high priority and many of the country’s physical assets privatization actions were taken rapidly and without much preparation. Inaccuracies occurred in the documentation of property rights and parcel mapping produced by the various privatization programs. A review and correction of errors and inaccuracies, it was thought, could be done quickly, if such work was done quickly and systematically following the original privatization activities.

An additional function of this “review” of privatization, was to organize the property records into property registries which would serve as the authoritative repository of such records. The corrected documented results of privatization had to be “registered”.

There were basically three strategic decisions that were facing the Albanians about how to organize the administration of land after privatization and the move toward a market oriented economy:

- 1) Should there be a “unified” Registry? The issue was whether there should be several agencies which would record rights and geographical location descriptions of properties, or should there be a single institution for recording property information? A related question was, should information be recorded about the interests in all properties, including publicly owned properties, or just the privately held ones?
- 2) Should the country have a “deeds” or “title” registration system? The issue was whether the recording of property information should be done simply by providing an official depository of privatization *tapis* and other documents showing the state’s transfer of ownership to private individuals and entities, as well as subsequent deeds of sale, inheritance, gift, or whether Albania should adopt a “title” registration system whereby property records are tied to well defined properties?
- 3) A “comprehensive” Registry? In many countries of Europe there is a separate agency for recording the boundaries of properties—the “cadastre”, and another agency for the recording of legal interests in properties—the “registry”. In Albania which did not have a “property cadastre” in the European sense in 1992, the question was whether a single agency should combine both the parcel mapping and registry of rights functions?

Pertaining to the first decision, one argument was that without a unified registration system, the advantages of a market oriented economy based on privately owned immovable property would be difficult to achieve. If each privatization program constructed its own registry, it would be

complicated and time consuming for the general public to find out which registry had the responsibility over their properties. It would be increasingly difficult and costly to maintain ownership records as the new owners engage in ownership transactions producing changes in the names of the recorded owners. If the publicly owned properties were not included in the IRPS, the management and disposition of such properties would be more difficult.

A single depository of ownership information would facilitate keeping authoritative records about who holds rights to land and buildings, providing a measure of security to the private and public holders of rights to land and buildings. A single Registry would also be useful to enable potential buyers or investors to determine the true owners of properties which they may wish to buy or make investments in (such as mortgaged loans).

The decision about building a deeds or title organization of the recorded property information was influenced by the trends in Europe, US and countries in transition from colonial administration to independence following WWII.

Particularly with the advent of computers and cheaper and more precise parcel mapping, internationally the trends had been leading to property based, map supported property rights registration systems, and the unification of cadasters and registries. In the case of new African countries, for example, the United Nations Center for Human Settlements (Habitat) in 1990 provided the following comments:

“Land is finite in extent and permanent by nature, qualities that make the land parcel an ideal basis for recording information since the rights, owners and usage may change but the land remains for ever.”<sup>3</sup>

In the countries of Europe, the trend in this century has been to link land parcels and registered rights to land. In Germany, Switzerland, and the Netherlands, there is a very close link between graphical, map based descriptions of parcels and registers of rights to these parcels. In the countries of the former-Austro-Hungarian empire (Hungary, Austria, Slovenia, Slovakia, and the Czech Republic), parcel based registration systems were being re-created to provide the underpinnings for the market oriented economies. In Denmark, Sweden, and Finland there were title registration systems based on the identification of properties through comprehensive parcel maps. Since the end of the last century the United Kingdom has been systematically transforming a deeds system or a system based on private documents, into a parcel based property registration system.

In Canada, several provinces have parcel based property registration systems. Other provinces are in the process of transforming their deeds based systems. A law reform commission in Ontario in 1971 recommended the introduction of parcel based title registration:

“Registration of titles is superior to registration of deeds in almost every material respect in which comparisons can be made at present. A land titles system is also the system that can be best adapted to fit the needs of the future, particularly when seen as a major component of an integrated land information system.”<sup>4</sup>

There is a passionate literature in favor of property based (“title”) registration. The debate over the adoption of land title registration in the United States has raged for decades. A summary of the arguments can be found in C. Dent Bostick, “Land Title Registration: An English Solution to an

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<sup>3</sup> United Nations Centre for Human Settlements (Habitat), *op.cit.*, p. 4

<sup>4</sup> Ontario Law Reform Commission. Report on land registration, Toronto Department of Justice, 1971, p. 23.

American Problem", Indiana Law Journal, Vol 63:55, 1987. While the deeds based system of recording of property rights is common in the US, in practice the deeds registries have been using references to comprehensive mapping of land parcels to describe the properties to which interests pertain. The title registration companies typically use a "property based" logic to record ownership and other interests in land and buildings extracted from the public deeds registry<sup>5</sup>.

Under Albanian conditions, with privatization proceeding rapidly and massively, it should be relatively easy to construct a property based, title registration system, since there was no need to examine a long historical record to verify the property rights of present holders of properties. So the conclusion was that the new system in Albania should be property based, title registration.

About having a separate or unified "cadastre/registration" system, in 1993 and 1994, key members of the Albanian working group for the design of the IPRO traveled to Vienna to meet with officials from the Leiter des Bundesamtes für Eich- und Vermessungswesen (BEV--the Austrian Federal Office of Metrology and Surveying) to learn about the system used for immovable property registration in Austria in general and the property mapping techniques in particular in Central Europe. The head of BEV<sup>6</sup> hosted the group and provided his recommendations concerning the overall strategy to be followed in the creation of the Albanian IRPS. About whether to set up separate cadastral and registration agencies, Mr. Hrbek recommended that Albania should create a unified title registration system, incorporating both registration of rights and the mapping of property boundaries. After long debates in Austria about how to modernize their registration/cadastral system, it had become clear that it would not be possible to integrate these administrative functions in a single institution in Austria due to institutional histories and procedures which had been established over centuries. The decision made in the early 1990's in Austria was to invest millions of dollars in integrating the cadaster and registries through a common computerized data base. The recommendation was that such expenditures should be avoided in Albania, in a country where all institutional arrangements were being restructured, and where private property rights were being re-defined on a massive basis. Having a single agency responsible both for mapping and rights registration would be less costly than having two separate agencies, and would be relatively simple to create since there was no tradition of separate entities in Albania.

Concerning the debate over having two registration systems, one for urban and one for rural, the BEV recommendation was that the IRPS should incorporate all properties, urban and rural, privately and publicly owned.

These considerations strengthened the resolve of the Working Group and the various Ministers involved in the design of the IPRO to establish a parcel based, title registration system combining mapping of parcels and the recording of legal rights for all properties, urban and rural, publicly and privately owned for all of Albania. The organization subsequently created by Law 7843 dated July 13, 1994 to administer the new immovable property registration system was known by that name and initials (IPRS) until 2005, when the organization's name was changed to Immoveable Property Registration Local Office (IPRO) under the Ministry of Justice (Law 9407, dated 19.5.2005). This

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<sup>5</sup> A more recent description of the desirability of title registration especially for former centrally planned societies that adopt private land ownership systems can be found in Tim Hanstad, "Designing land registration systems for developing countries", American University International Law Review, 13:3, 1997, p. 647-703. Hanstad concludes that especially for the transition countries, "land title registration is superior to land recordation", id., p. 676.

<sup>6</sup> Dipl.-Ing. Friedrich Hrbek was the Head (Präsident) of BEV at that time.

paper uses the name IPRO to refer to both the IPRS prior to Law 9407 and to the IPRO defined by Law 9407.

There was an additional, priority issue to face, namely what to do with the privatization documents emerging for highly valued properties in urban areas. There was no IPRO office functioning legally in Albania until mid 1996 following the approval of the law in late 1994 and the naming of the Chief Registrar in February, 1996. For urban properties being privatized beginning in 1993, recording the new ownership rights was done in the recently re-opened *Ipoteka* offices. In the case of the agricultural properties, recording ownership of the newly privatized parcels was done in District Cadastral Offices.

These recording procedures were viewed as temporary, although especially in the case of the *Ipoteka* offices these procedures and the staff of the offices had the official support and approval of the Ministry of Justice which administered those offices. In effect, then, with the opening of Registration Local Offices in 1996 and the gradual building up of their parcel index maps and rights registration information, there were two parallel systems for the registration of rights to immovable properties—the *Ipoteka* Offices and the Registration Local Offices.

The situation facing the country in 1993 and 1994 was full of problems and opportunities. The *Ipoteka* offices were typically understaffed and without sufficient space to store property documents<sup>7</sup>. While the mapping of buildings in urban areas had been of high quality, there was no comprehensive mapping of the ownership of buildings, dwelling units within buildings, or parcels of “owned” land in urban areas.

In the newly privatized agricultural land parcels in villages, the records were stored in the District Cadastral Offices, which were also understaffed and without sufficient space for orderly document storage and retrieval. Substantial mapping of fields and basic topography existed, but the privatization documents used rudimentary metes and bounds descriptions and did not reference parcel maps since such maps did not exist and could not be easily delineated on existing field maps because of the small sizes of the privatized parcels and the small scales of the existing mapping.

On the one hand, with privatization proceeding rapidly and massively, it should have been relatively easy to construct a property based registration system, since there was no need to examine a long historical record to verify the property rights of present holders of properties. But the logic of the document recording in the *Ipoteka* and Cadastral Offices, it was thought, would produce costly search procedures in the future operation of the land market. The lack of parcel maps meant that in the future it would be very difficult for owners to document their ownership.

There emerged a consensus in 1994 that unless dramatic steps were taken to create a single, modern property registration system by creating, organizing, equipping, and training property Registration Local Offices in each District for all real property, urban and rural, the advantages of a market oriented economy involving immovable property would be difficult to achieve. The fear was that as time passed, the information which existed during the frantic time of privatization as to who had ownership and usufructory rights to the land and buildings would be difficult to determine and what information that was accessible would rapidly become out of date. Such a forecast meant that the holders of rights would not have recourse to the State for protection of their property rights, and that the marketability of the land would decrease, mortgages would be difficult to acquire, and the

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<sup>7</sup> See David Stanfield and Maksi Raco, 1994, “Land Markets, Information and a Property Registration System in Albania”, Paper prepared for the Conference, “GIS/LIS '94 - Central Europe”, June 13-17, 1994, Budapest, Hungary.



likelihood of conflicts over ownership and boundaries would increase. The security of tenure required for the level of investment that the country needs would be difficult to achieve<sup>8</sup>.

The decision was made by the Working Group in early 1994 to recommend to Government that Albania should create a modern, comprehensive, unified, property based system for the registration of ownership and other interests in immovable property<sup>9</sup>. The structure and operations of that system were codified into law when Parliament approved the Immovable Property Registration Act in July of 1994

### **1.3 HOW TO CREATE THE NEW IPRO**

The basic design of the IRPO was decided. The question then became how to create it? There were two methodological options:

- 1) sporadic registration. Under this approach the new IPRO offices would assemble information about the interests in land and buildings when people decided to transfer those interests, or when they wished to mortgage a property;
- 2) systematic registration. Under this approach a “project” would be designed to systematically map the location of all parcels and apartments and gather the authoritative evidence of ownership of these properties in specific geographic areas. These maps and evidence would then be “registered” in the new IPRO offices, creating the information base for the subsequent registration of all changes in the ownership and other interests in all immovable properties of the country.

Given the availability of donor funding for the creation of a new IPRO, the decision was made to conduct a systematic “first” registration of all properties in the country.

Then the question became, who would be given the responsibility for conducting this “first registration”? In 1993, there were no private land survey companies, and the legal profession was just emerging with expertise in “property” matters. There was no Civil Code, but there were several laws describing the privatization of state properties. The overall legal and institutional framework for supporting and regulating the operations of property markets was just beginning to emerge.

In this context, two recommendations resulted: 1) that an overall strategy be devised for establishing the land administration laws, policies and institutions—a Land Market Action Plan—which would describe the steps for creating the IPRO, but would also contribute to fashioning the legal, policy and institutional framework for immovable property aspects of the emerging market oriented economy; and 2) that a Project Management Unit (PMU) be authorized by Government with the responsibility for coordinating the donor and government efforts to implement that Action Plan over a period of 5 years, later extended to 7 years. Both recommendations were embodied in Government decisions in late 1993.

These decisions meant that foreign donor support for the Land Market Action Plan would not be administered by foreign companies nor by a Government Ministry. Rather the PMU, an

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<sup>8</sup> “Information on the location and tenure of land is a basic requirement for effective land management and the functioning of land markets”, United Nations Centre for human Settlements (Habitat), 1990. Guidelines for the Improvement of Land-Registration and Land Information Systems in Developing Countries, Nairobi, p 1.

<sup>9</sup> See Ahmet Jazoj, David Stanfield, Teresa Barry, “Albanian Land Market Action Plan: Purposes, Achievements, Lessons”, 17. Albanian Series Working Paper No. 1, Land Tenure Center, University of Wisconsin-Madison

independent entity, had the authorization by the Council of Ministers to contract services for the implementation of the Action Plan, and to be contracted by government or foreign donors to carry out aspects of the Action Plan. A critical feature of the PMU, however, was that the Minister of Agriculture and Food had the power to name the General Manager of the PMU, as well as the Executive Council of the PMU. An inter-ministerial coordinating committee was established to oversee the implementation of the Action Plan, but never functioned effectively. Therefore, the PMU was subject to political interference and had an “agricultural” identity from the time of its creation in 1993. During the first 6 years of the functioning of the PMU, the Ministers of Agriculture did not exercise their power over the PMU’s management other than the initial nomination of core staff. Unfortunately, the “agricultural” identity of the PMU’s work was never overcome, meaning that the urban and transport sector agencies and professionals did not become involved with the PMU as much as would have been desired.

Having a completely independent, private, organization authorized to carry out the Action Plan was not considered as feasible in Albania in 1993, since there were no organizations with any such capacity in the country at that time.

Why not bring in a foreign company to create an IPRO and to establish the legal, policy and institutional framework for a properly functioning real estate market, and “roll out” a functioning IPRO, rather than establish an Albanian PMU and through that PMU help build up a functioning IPRO? A meeting of donors and the Albanian government in 1992 concluded that USAID should take the lead in assisting the Albanians with the “property” question.

USAID decided to ask the University of Wisconsin to help develop a Land Market Action Plan, and to be the channel for USAID assistance for the implementation of that Action Plan. This challenge to the UW was to do more than research and training which had been the traditional areas of involvement of the UW in its past collaborations with USAID, and instead take the responsibility for the actual implementation of an ambitious land tenure project.

A lively discussion within the University where some faculty expressed strong opposition to getting the University involved in the implementation of a massive program extending well beyond the traditional research and training interests of the University. The University decided to accept the challenge and authorize the U.W.’s Land Tenure Center to take on a Land Market Development Cooperative Agreement with USAID. Under that Cooperative Agreement the LTC provided technical, financial and training assistance to the PMU authorized by the Government of Albania to implement the Land Market Action Plan.

That LTC assistance was “institutional” for developing the capacities of the PMU, and financial for funding the PMU’s efforts to initially register rights to properties and for helping to equip the new IRPS Registration Local Offices and the training of the staff of those offices. The European Community agreed to fund the mapping of parcels also through its funding and technical assistance for the PMU. The World Bank agreed to fund land market policy and legal studies, through Terra Institute’s work on these topics with the PMU.

One key to this complicated and ambitious effort was a creative and committed PMU staff. The General Manager of the PMU with support from the Minister and Vice Minister of Agriculture and Food<sup>10</sup> located people to staff the PMU who were intelligent, committed, creative and willing to

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<sup>10</sup> The General Manager was Ahmet Jazoj, Hysen Halili was the Minister and L Lazar Korra was the Vice Minister who were largely responsible for putting together the PMU team and financing for what was accomplished.

learn. This team held together for seven years and accomplished the first registration of over two million privately and publicly owned properties, and the opening of 34 Registration Local Offices. Another key was the commitment of the donors to a long term effort and a willingness to allow the PMU and the UW the flexibility necessary to create a new set of land administration institutions. One indicator of the success of this effort, in addition to the “targets” achieved, is that the legislation developed for the creation and operation of the IPRO has been widely consulted and used for developing similar concepts in Georgia, Moldova, Kyrgyzstan, Bellarus and other transition countries.

## **2. THE RESULTS OF THE LAND AND BUILDING PRIVATIZATION EXPERIENCE**

In Albania, the transition from State to private land management began with the distribution of agricultural land to rural residents according to Law 7501 of 1991. Programs for the restitution of urban properties to their former owners and for the privatization of State owned apartments to their occupants began in 1993. Privatization programs were being designed and implemented rapidly.

The creation of new private and public properties proceeded very rapidly. By the end of the year 2000, there were nearly 4 million properties, as shown in Table 1. Clearly the ownership of immovable property has been widely distributed throughout the population, although there is a high fragmentation of agricultural land (about 5 parcels per family). The number of properties keeps growing as public properties are subdivided and privatized and as privately owned properties are subdivided.

It should be noted that in the Albanian case, there is a very dynamic “informal” property development activity. People occupy land, often on the urban periphery, build their homes and engage in market transactions, with minimal documentation and without the legal registration of such transactions.<sup>11</sup> Incorporating these properties into the IPRO is a major challenge, and at the same time their existence and the vibrancy of the market in such properties raises questions about the effectiveness of the IPRO model.

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<sup>11</sup> The origins and dynamics of this process is described in Haxhi Aliko and Romeo Sherko, “On Regularization of Informal Settlements in Albania”, Tirana, Albania, August, 2002.

**Table 1: Estimate of Number and Types of Immovable Properties as of the end of December 2000**

Type of Immovable Property	Number of Properties
<b>Village CZ's:</b>	
Agricultural parcels with <i>tapi</i>	1,686,565
Agricultural parcels w/o <i>tapi</i>	97,630
Privatized housing and business	219,300
State owned parcels	919,131
Subtotal Village land parcels	2,922,626
Forest and Pasture parcels	309,600
<b>Subtotal Rural Parcels</b>	<b>3,232,226</b>
<b>Urban Areas:</b>	
Apartments—Privatized	231,000
New Apartments-Private	55,000
Villas, businesses w/ doc.	88,256
Land, with documents	3,312
Villas, businesses w/o doc.	59,616
Land without docs.—vacant	2,208
Buildings done after 1991, informal	29,808
State properties, urban	82,800
<b>Subtotal Urban Properties</b>	<b>552,000</b>
<b>Peri-Urban Areas:</b>	
Peri-urban build, w/o doc.	94,000
Peri-urban parcels, w/o doc.	94,000
Properties with documents	16,000
Peri-urban state owned prop.	9,400
<b>Subtotal Peri-Urban Prop.</b>	<b>213,400</b>
<b>Total Properties</b>	<b>3,997,626</b>

Source: Project Management Unit for the Land Market Action Plan, Tirana, Albania, April, 2001

### 3. IMMOVABLE PROPERTY REGISTRATION IN ALBANIA: CORE CONCEPTS

The IPRO in Albania was designed as a unified, comprehensive and parcel based title registration system because of its applicability to a defined parcel of immovable property and the flexibility it has in being able to be utilized for a multitude of immovable property and mapping related purposes. The Law “**ON THE REGISTRATION OF IMMOVABLE PROPERTY**”, No. 7843 dated July 13, 1994 is procedural, but it sets the stage for a dynamic use of technical concepts that should lead to an enhanced and better understood management of property. The procedures for immovable property registration attempted to establish the technical and organizational basis for the future development of computer based information systems which unify geographic (map) and attribute (kartela) information, and linking these components of a registration information system

which opens the door for the creation of a Geographical Information System that could be of significance for the future development of Albania.

### 3.1 MAIN CONCEPTS OF THE IPRO

Central concepts used in the construction of the IPRO in Albania<sup>12</sup> are the following:

**Kartela:** A page of information prepared for each immovable property, including information about its: a) geographical location; b) general description, such as area, type of property, whether within urban boundaries or not, and whether a part of a building; c) who holds different ownership rights over the property; d) who rents, leases, uses, has a servitude, or holds a restrictive agreement over the property; and e) what mortgages, court decisions, or other restrictions on changing ownership exist. A paper kartela is filled out for each property, and a digital copy made of the information recorded on the paper kartela.

**Registry Index Map:** A comprehensive map of all parcels of land with kartelas. Scales of maps include 1:2500 for most agricultural parcels and 1:1000 for most urban parcels. A digital copy of the Index Map is produced, following the completion of the field surveys.

**Registration Zone:** A geographically defined area, usually a District, which is the administrative responsibility of an Immoveable Property Registration Local Office (also known as a local Registry). A zone may be smaller than a District such as in the case of a large city (originally Tirana had two local Registration Local Offices), or may include two or more Districts if the Chief Registrar determines that there are not enough properties or transactions in a District to justify a Registration Local Office in each District.

**Cadastral Zone:** A geographically defined area, usually a village in rural areas, or a neighborhood in cities, which is small enough to be able to locate parcels relatively easily, usually containing no more than 1500 immovable properties. There are no more than 200 Cadastral Zones in any Registration Zone, and usually fewer.

**Immovable Property Number:** Each immovable property in Albania has a unique number, composed of the Cadastral Zone number and within that zone, a unique number. For agricultural parcels this unique number within a zone is usually composed of the old field number followed by a “slash” and a subdivision number. For example, the number 1289 11/32 refers to subdivision 32 of old field 11 in Cadastral Zone 1289. For apartments, the number is composed of the Cadastral Zone number and within that zone a unique number, which is usually the old building number, stairway number and apartment number.

### 3.2 LOGIC OF THE REGISTRATION SYSTEM

#### 3.2.1 Five Principles of the IPRO

In the creation of the Albanian IPRO, five basic principles have been followed, at least theoretically:

1. “mirror” principle, that is, the information about immovable property which is contained in the Registration Local Offices should be a reflection of what really exists. To achieve this goal,

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<sup>12</sup> See Lida Stamo and Norman Singer, 1997. “Albanian Immoveable Property Registration System: Review of Legislation”, Land Tenure Center, Working Paper No. 7.

information about interests in the properties is being collected by field teams from existing and recently produced decisions about the privatization of these rights. Field teams are also verifying the boundaries of the properties. All such information is put on display in the local villages and neighborhoods for 90 days, during which time any errors are corrected.

- 2 “curtain” principle, that is, the property registers (kartelas) should show information about ownership and other interests that does not require further verification. The field work and documentation produced is checked for accuracy, and the essential information is recorded on the kartelas.
- 3 “certainty” principle, that is, there is a guarantee that the information in the kartelas is correct in that if someone is damaged by incorrect information in the IPRO, he/she can be compensated by the State.
- 4 “accessibility<sup>13</sup>” principle, that is, the costs of access to the Registration Local Offices should be minimized so that any person regardless of their wealth or location, can have easy access to the registration system. The Registration Local Offices are being located in each District so that geographically they are accessible to the people. Costs of transactions are being minimized by allowing any transaction to be carried out at the Registration Local Office, thereby minimizing legal, notary, and surveying fees.
- 5 “comprehensive” principle, that is, all immovable property, privately and publicly owned, urban and rural is contained in the IPRO. The privatization documents which are being produced by the eight different privatization programs are being collected and used to register rights to all types of immovable property. Governmental agencies which are responsible for publicly owned immovable properties are being identified on the relevant kartelas.

### **3.2.2 Organizational Features of the IPRO in Albania**

Several features of the institutional structure of the IPRO were designed to assure the efficiency and professional excellence of that system.

#### **Independent Local Registrars**

The operational office in the Albanian IPRO is the District Registration Local Office where a Registrar and staff have the authority to do first registrations of properties not already in the IPRO and to register all valid transactions on properties which already have a kartela and index map

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<sup>13</sup> Dale, Peter and John McLaughlin, 1999. Land Administration, Oxford University Press, N.Y., identify the first three principles mentioned, as did T.B.F. Ruoff, An Englishman Looks at the Torrens System, The Law Book Company of Australasia, 1957, p. 8. The Albanian experience showed the importance of “accessibility” and “comprehensiveness”, at least in the transition situation. One tendency in some transition countries, also observed in Albania during the design of the IPRO, was the inclination to centralize of IRPS administration, modeled on the centralized administrative structures of the previous regimes. With the dissolution of the state’s command structures, the narrow waist of the “hour-glass” administrative system from the previous regime had to be widened and thickened by organizations which function close to the population and are very accessible to the public (See Richard Rose, 1995. “Russia as an Hour-Glass Society: A Constitution without Citizens”, East European Constitutional Review, Vol 4, No. 3, pp. 34-42). As for “comprehensiveness”, one of the difficulties of many title registration systems is the exclusion of certain types of land, such as state owned properties, or properties outside of urban areas. This exclusion has usually been due to budget limitations for the incorporation of properties into the title registration system. In most transition countries donor assistance has been sufficient to aim toward creating a comprehensive IPRO.

identification. All decisions are made locally about the registration of transactions, thereby making transactions easier to conduct than if they all had to be registered in a central office.

A Registrar has significant authority to register or not to register a transaction based on an application by an interested owner. The Albanian IPRO is a “de-concentrated” administrative unit in operational terms. The Registrars do not have to get the Chief Registrar’s approval for completing the registration of a transaction. At the same time, the Registrar is not part of local government and is, thereby, not as subject to local political pressures as it would be if part of local government. This shielding of the Registrar from local politics was designed to limit political pressures for the registration of questionable transactions, or for the delay of registration for political purposes. This strategy has yet to be proven effective.

### **Chief Registrar**

The Chief Registrar after 2005 is nominated and dismissed by the Prime Minister, upon the proposal of the Minister of Justice. The Chief Registrar has an office and staff in Tirana, and has the authority to propose candidates for the position of local Registrar to the Minister of Justice, who nominates Registrars. The Chief Registrar also provides training to the Registrars them and their staff, and to periodically evaluate their procedures and to issue instructions about the proper functioning of Registration Local Office. To choose people most capable to be Registrars the Chief Registrar has the authority to test applicants about their knowledge of the IRPS and relevant property law and mapping procedures which Registrars need to understand and appreciate for the proper functioning of Registration Local Offices. These functions of the Chief Registrar were put in place to help develop the professionalism of the Registrars and their staff.

The Chief Registrar also has budgetary authority over the Registrars. Funds from the national budget flow to the Registrars from the Minister of Justice through the Chief Registrar, who has the responsibility of instructing the Registrars about the proper use of budget resources.

The initial expectation that the Chief Registrar would be motivated to make the staffing and operations of the Registration Local Offices highly professional and efficient has not always been born out in practice.

### **Independent IPRO**

The Chief Registrar reported until 2005 to a representative of the Prime Minister and later to the Council of Ministers, and was not part of a line Ministry. This transitory arrangement was to be in place during the first registration phase, when properties of various types, rural and urban, were being examined and included in the Registration Local Offices’ information systems. The reason for this arrangement was to avoid sectoral conflicts which could arise if the IPRO was located in a line Ministry such as the Ministry of Agriculture and Food or in the Ministry of Construction and Territorial Adjustment. Also, since the IPRO combined technical mapping activities with legal procedural techniques, locating the IPRO in the Ministry of Justice could result in inattention to the mapping component, while locating the IPRO in technical mapping agency could result in inattention to legal procedures. In 2005 the IPRO came under the authority of the Ministry of Justice as a state budget institution.

### **Notaries**

Under the Albanian law, the Registrar has significant power to accept or reject applications to register properties and transactions, and thereby might be tempted to withhold action unless given a “facilitation fee”, a first step toward corrupting influences on the Registration Local Offices. To counterbalance this tendency, the designers of the IPRO in 1993 supported the creation of

independent notaries, with their own professional organization and responsibilities for the professionalism of its members, who would be authorized to prepare land market transaction documents. The assumption was that such notaries whose income would depend in great measure on getting transactions registered, would be motivated to monitor the behavior of the Registrars and their staff, and to complain to the Chief Registrar should the demand for “facilitation fees” and the slowing down of registration become apparent. The notaries would, then, provide some professional guarantees that land market transactions were done according to the law, and they would counteract tendencies in Registration Local Offices to delay registrations. The power of the Registrars to punish notaries who would criticize them by refusing to register transactions from critical notaries has in some instances functioned to keep notaries from pressuring for more efficient management of Registration Local Offices.

The procedures used by the Notaries were usually based on models from Central European countries, notably that of Austria. The notaries require that parties to transactions bring to them evidence from the Registrars about the ownership and other interests in the property being transacted, and from the Civil Registry about the identity of the parties and their families in cases of transactions involving agricultural land under family ownership. The notaries do not proactively investigate the title of the present owner by searching the Registration Local Office records. This approach in the early years of a new IPRO has not contributed to improving the information contained in the IRPS.

The notary fees are set by the Ministry of Justice, and their nomination as notaries is done by that same Ministry. Since Ministry officials often wish to become notaries, there is little incentive to keep notary fees relatively low, thereby increasing transaction costs for the general public over what could result by a more independent regulation of fees.

### **3.2.3 Parallel Registry for Deeds—The Ipoteka**

While the focus has been on the new IPRO, since 1992 the old Ipoteka offices were re-opened, and have been used as depositories of documents describing transactions of various sorts involving mostly urban land and buildings, but also buildings in village settlements: privatization decisions, sales, mortgages, gifts, inheritances, and long term leases. For properties not incorporated into the IPRO, transaction documents are recorded in an abstract form in a daily journal, where the names of the parties, type and address of the property are noted. The documents themselves are numbered and placed sequentially in an archive according to the dates of the transactions. To prepare for the integration of the Ipoteka system into the IPRO, the Registrars prepare a provisional “kartela” of each property when a transaction occurs, recording on the kartela the history of the ownership of the property. The Registrar also assigns a number to the property by locating the property on the Index Map as well as the information provided allows.

The Ipoteka recorded transactions involve properties which are usually of high economic value, typically much more valuable than the agricultural land parcels and building sites in villages which have been the priorities of the projects undertaken to incorporate private properties into the IPRO.

The Ipoteka offices have had a large responsibility in displaying and protecting rights to valuable urban properties. Until 1998, these offices were administratively under the Ministry of Justice, but in that year, were transferred to the Registrars, under the Chief Registrar.

The result has been the Registrars having to administer two registration systems, the Ipoteka, deeds based system as well as the parcel based IPRO. Over time, the plan is for the Ipoteka based transactions to gradually decrease as properties are incorporated into the parcel based IPRO.



In a later section we present more about how these principles and operations have worked in practice.

### **3.3 IPRO AS AN INFORMATION SYSTEM<sup>14</sup>**

Land markets, as well as financial, commodity and equity markets do not involve the transfer of physical objects from sellers to buyers. Rather in land markets, people transfer the rights to occupy and enjoy a piece of the earth as well as the obligations to refrain from using the land in ways proscribed by law or custom. These transfers of rights and obligations from one person to another in complex societies rely on documentation of the nature of the transfer.

This documentation of transfers has traditionally been done with words or sketches on paper and requires that people be able to read and understand the words and sketches providing information about who owns what right to what property. But there are other ways for recording and “reading” the information contained in words and sketches.

Information technology is developing rapidly the positioning of machines, which magnetically produce digital recording of words and sketches in digital form in front of people who use these machines for transmitting information.

The Albanian IPRO manages a combination of paper based information and digital information.

The IPRO in Albania is composed of Registration Local Offices in each District which record and display information about the rights that people and/or agencies hold in immovable properties. The IPRO (and the laws that protect such rights) should provide significant psychological security to the holders of property rights, and is, thereby, a central institution for assuring societal stability.

The IPRO also enables people and agencies to engage in transactions involving such properties without physically exchanging them (a necessity for “immovable” properties!). That characteristic of the IPRO distinguishes it from market institutions which structure transactions in reference to commodities and to labor, and even fundamentally the institutions, which structure the market transactions involving capital (money).

Since the IPRO structures market transactions involving immovable properties, what people and agencies “exchange” in such instances is information about immovable properties. When a family decides to give a piece of land to a child as an inheritance, they decide to change the name of the owner on the register (kartela) to that of the child. When a person “sells” a property to another, she agrees to change her name as the owner on the kartela to the name of the buyer.

But this information change in the records of the IPRO is not simply a change of words, but is also a change in the form of wealth of the two parties, with the family providing a child with a basis for his/her future, or the seller accepting money or some other thing of value and the buyer accepting the control over the property to use it to achieve his goals which money was not able to do. Since the transaction involves wealth, power, control, and the future well being (the property rights) of the two parties to the transaction, a large body of law defines how the information about the transaction is recorded, and what it means. People get very disappointed when this information is inaccessible to them when they need it, and even more frustrated when this information is incorrect.

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<sup>14</sup> See David Stanfield, 1997, “Immovable Property Registration Information System in Albania”, Land Tenure Center and Project Management Unit, Tirana, Albania.

The Law on the Registration of Immovable Properties (Law 7843 of 13 July 1994) and other legislation define the procedures for carrying out transactions and the institutional structure of the IPRO and the procedures which the IPRO uses to make the information about rights to immovable property accessible. Figure 1 shows how the IPRO functions, or should function, to accomplish its management of very important information.

The entity with the responsibility of managing information about property rights is the Registration Local Office, which has a specific geographical area as its jurisdiction. That means that the Registration Local Office should contain all relevant and legally required information about rights to immovable properties, which are located within this area (called a Registration Zone, which is usually a District, but may be a part of a District, or may be a combination of two or more Districts).

The legally necessary information about immovable properties is of three types, in physical and digital form:

- The Kartela for every property;

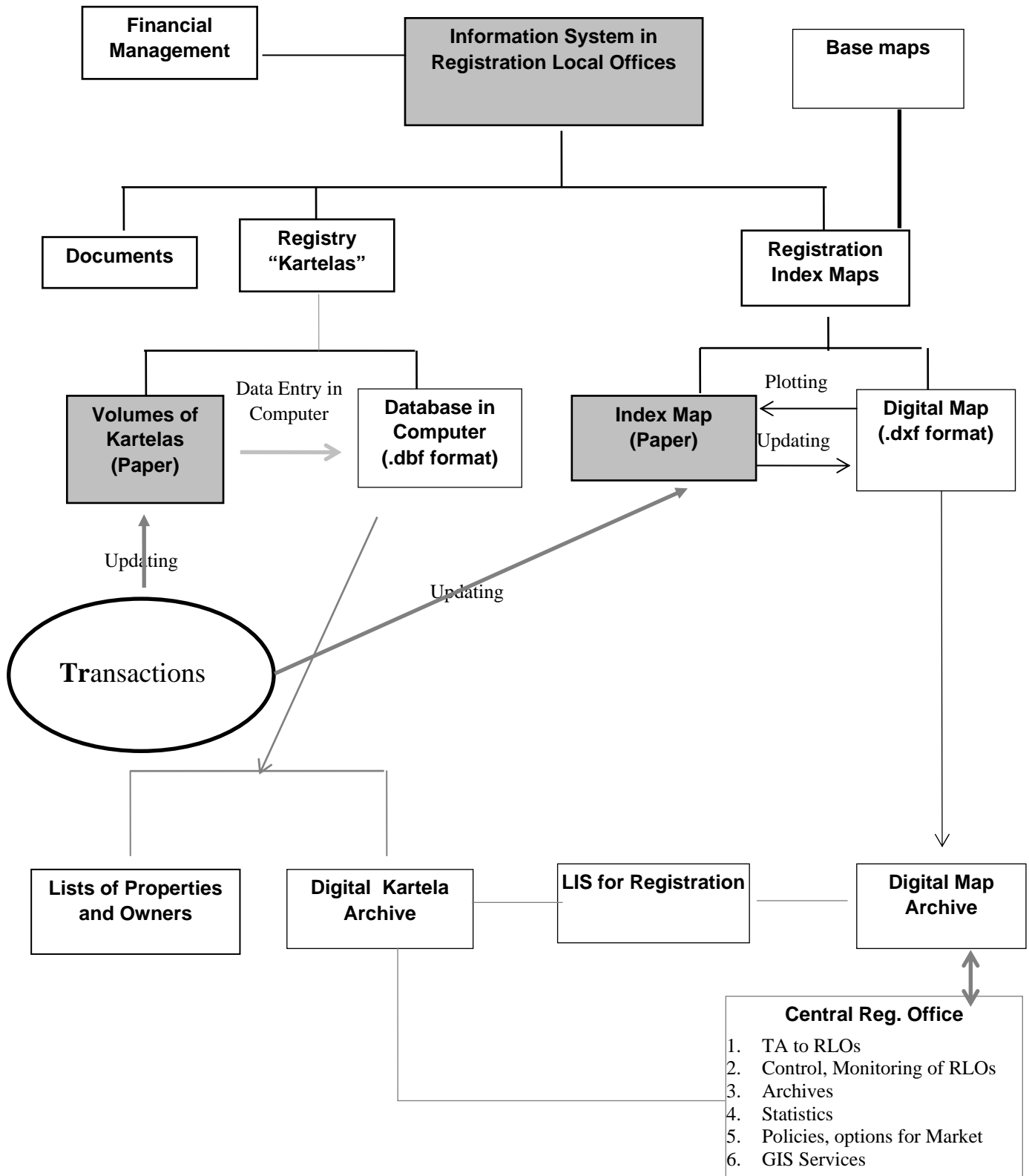
- The Index Map showing parcel boundaries for all parcels in a Cadastral Zone;

- The documents displaying the origins of the rights held by the present owners, and any changes in parcel boundaries following the finalization of the Index Map.

Digital copies of the Kartelas and Index Maps are supposed to be produced for archival purposes and for supporting the operations of the Registration Local Offices (for example, owner name indices, the production of updated Index Maps). In those Registration Zones with proper conditions, more of the registration operations can be gradually computerized.

Any action which changes the information contained on a kartela or on the index map by law must be registered, that is, the parties responsible for the change must apply to have the change introduced into the kartelas and/or index maps which comprise two of the most important elements of the IPRO information system. This means that if the change has to do with information on the Kartela, the change must be made in the physical kartela and should also be made in the digital database copy of that Kartela. If a change involves a boundary change (subdivision of an existing parcel or merging of two existing parcels, or correction of an error on the index map), it must be recorded on the physical index map and should also be incorporated into the digital copy of that index map.

Figure 1. Information System for IPRO: Parallel Paper Based and Digital Backup (initially)



### 3.4 COMPUTERS IN THE IPRO<sup>15</sup>

As set out in the design of digital information system, during the stage of creating new Registration Local Offices, computers play an assisting role in the process of first registration and in the functioning of the IPRO. More concretely, they are used to:

- Generate lists for correcting kartelas and for the display of ownership and other rights as determined during the first registration process.
- Provide lists and indices for registering subsequent transactions in the Registration Local Offices (RO).
- Create backup, archival copies for the kartela and index map information in case the kartelas or index maps are destroyed or improperly altered.
- Enable a linking and comparison of the kartela and map information after display and for error correction.
- Generate revenues for ROs by selling information to certain users of land registration information.

During the first few years of the Action Plan, the IPRO intended to work on a dual approach: **paper** kartelas and index maps and **digital copies** of the kartelas and index maps. The information basis of the IPRO is the *paper system*, which is legally the official record of ownership and other rights to registered immovable properties.

In this context, the creation of the digital kartela databases (legal information) and the digital index maps is designed to be introduced step-by-step, without requiring expensive computer solutions. Such a strategy was forced by the following:

- Lack of dependable electricity infrastructure in Albania, particularly the frequent and long outages of electricity which means that an information system which depends on the computer has to devote substantial resources to infrastructure substitution (generators, UPS)
- Lack of functioning telephones and clean telephone lines outside of the capital, which requires networked information systems to invest substantial sums in establishing telephone lines or in inter-city transportation of digital records by bus or car;
- Lack of a pool of people who are “computer literate,” who know the basics of computer use and maintenance and virus control, and who can be employed in the IPRO;
- Lack of computer service providers to fix problems which inevitably arise with computers and their associated equipment (computer specialists have been concentrated in Tirana, and many of them leave Albania each year);
- There are still employees in the Registration Local Office that are not familiar with how the system functions, but may learn more quickly when they can see and read the records directly;

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<sup>15</sup> See Romeo Sherko and David Stanfield, April, 2000. “Adapting Information Technology (IT) for Land Market Institutional Development: With Special Reference to Albania”. Land Tenure Center, University of Wisconsin. Paper presented to the American Association of Geographers Conference, April 2000, Pittsburgh, Pennsylvania.

- IPRO is in the process of building itself, and regulations and procedures for the operations of offices are still being changed and refined;
- Uncertainty about IPRO financing and the ability to maintain computer technology in the future.

Hence, the focus on information system development in the IPRO has been to:

- Establish the new IPRO information on paper records which people can read and update with widely known and mastered technology—ability to read and write;
- Develop parallel digital databases for kartelas and index maps for specific purposes in the initial stages, which are not absolutely necessary for the functioning of the IPRO offices;
- Define procedures for having a good archiving system in the Central Office of the IPRO;
- Work with well-known and standard digital data structures (.dbf and .dxf), in order to be compatible with computer applications developed in the future;
- Work with small files, i.e. one file for each cadastral zone;
- Solve the specific functions for the digital information as outlined above;
- Provide a learning process for everybody involved with the computerization of the IPRO.

Although there are extra costs related to the implementation of this dual approach (shown in Figure 1) rather than moving immediately to a completely digital system, it has been the better choice given the specific conditions in Albania. The immediate introduction of a fully digital property information system is not yet feasible. However, by implementing simple computer solutions to specific problems in a step by step way, using standard exchange file formats, the IPRO can create the flexibility and experience needed for the eventual expansion of the digital systems. This continued development of digital information management has not been done, however.

### **3.5 COMPUTERS IN THE IPOTEKA SECTION**

In most Registration Local Offices, the numbers of transactions handled by the Ipoteka section are few enough to be handled manually. In Tirana, however, two computer applications have been tried. The first is the creation of a data base from the daily log of the Ipoteka clerk, which facilitates subsequent searches for names of buyers and sellers, and which helps reduce the temptation to introduce documents out of temporal order. To insert documents out of order would require inserting entries into the daily log, which is difficult, but also modifying the data base and the back up copies of the data base, which is also difficult.

A second application of IT to the Ipoteka subsystem has been the idea of scanning documents in the archives and as they arrive in the Registration Local Office, which can facilitate title searches and which provide greater security than the physical archives.

## **4. REFLECTIONS ON THE EXPERIENCES WITH THE IPRO**

Several transition countries in E. Europe and formed from former Soviet Union have adopted IPRO's similar to that of Albania—Kyrgyzstan, Georgia, Moldova, Belarus, among others. Evaluating what has happened in Albania could be instructive in an overall assessment of how effective efforts have been in creating this type of IPRO. Evidence is accumulating from countries which have adopted the parcel based, title registration approach, as to how things are working. All

is not well with the Albanian IPRO (see Annex 1 for how the 2006 Modernization Strategy summarizes the main problems affecting the IPRO).

#### **4.1 REGISTRATION LOCAL OFFICE STAFF – TRAINING AND PROFESSIONALISM**

Due to low salaries and political pressures, the nomination of Registration Local Office staff, including the Registrars, often results in an unprepared and non-professional staff. The qualifications of staff may be written to a high standard, but in practice little training is provided to new employees. Appointments too often owe more to political and personal contacts than to knowledge and capacities. Of course there are important exceptions to these tendencies, with many Registrars and staff being seriously committed to their new professions. But there are too many of the negative examples to be sanguine about the sufficient levels of work quality and professionalism of staff throughout the IPRO.

#### **4.2 FROM FACILITATION FEES TO FALSE DOCUMENTS IN THE REGISTRATION LOCAL OFFICES**

The monopoly power by the Registration Local Offices to accept documents for registration of transactions gives rise to the temptation to reject or delay applications until “facilitation fees” are paid. The counterbalancing pressures from the Notaries to pressure the rapid registration of transactions have not materialized, in large part due to the fear by the Notaries that if they openly criticize a Registrar, future applications for registration will be delayed or rejected. The Registrars’ powers are substantial.

Facilitation fees are in themselves not damaging to the operations of the Registration Local Offices, except that once such fees become normal and expected, those who pay the fees can naturally expect services which can be more than just rapid turn around, but can evolve into accepting fraudulent documents into the registry. Moreover, such fees often grow in amount, until they become quite excessive, a disincentive for people to register their transactions. Thirdly, the payment of such fees creates the image of the Registration Local Office as being corrupt in the public mind, which when combined with what people see as excessive fees can drive people to conduct transactions informally, outside of the formal Registration Local Office.

#### **4.3 PASSIVE NOTARIES**

Notaries function in most countries by asking the parties to transactions to bring them documents from the Registrars and from the Civil Registry. Based on these documents, the Notaries prepare the transaction documents. Such a procedure works well in European countries where the professionalism of the Registration Local Office staff is highly regulated and predictable and the information that they manage is trusted to be accurate. Where such professionalism is not the case, the passiveness of the Notaries is not helpful. Under such conditions the Notaries would do a better job if they or their representatives actually went to the Registration Local Offices and did a title search, to verify that the owner according to the Registrar has a strong title to the property, based in valid transactions in the past. Since Notaries do not operate in this way, there is little improvement of the strength of the title shown on the Kartelas.

#### **4.4 SPECIAL REGISTRATION FEES AND DEGRADATION OF RECORDS**

For the creation of the IPRO, in Albania as in many countries, the strategy has been to launch projects to systematically bring properties (kartelas, maps, documents) into the Registration Local

Offices in a national program of first registration. Such projects are often subsidized by international donors, so that the Registrars do not earn fees from this activity. However, such projects do not magically produce complete and accurate kartelas, maps, and documents in an instant, but often require several years to produce their products. In the meantime, for the land markets to function, there must be procedures for the sporadic first registration of immovable properties. These procedures typically produce fees for the Registrars, facilitation or normal, and income for the IPRO and staff. A frequent reaction is for the Registration Local Office staff to state that the subsidized, systematic initial registration efforts are not of sufficient quality and to require transactions based on such information to be investigated, or to require new initial registration, and produce fees. The result is public distrust in the records produced by the projects, and the duplication of first registration efforts. If this re-registration occurs, the result may not be damaging in the long term to the integrity of the registry. However, the tendency is for every transaction to be treated as another special registration, which means that the IPRO may gradually evolve into a deeds registry without the advantages of a parcel based, title registration system.

#### **4.5 TECHNICAL DEGRADATION**

The systematic first registration projects typically work with IT, while the operations of many Registration Local Offices are done manually with paper maps and paper kartelas. The procedures developed for updating and using the digital data bases produced by the first registration projects are largely ignored by the Registrars and their staff. The result is the gradual departure of the physical records from the digital ones, which means that the shift to a digital, IT based Registration Local Office in the future will be impossible without substantial additional investments. Today's investments by first registration projects in digital kartelas and maps are in danger of being lost.

But there is also occurring a degradation of paper index maps. One problem is that in the densely built newly urbanized areas which had been agricultural land and registered as such, the parcel index maps are often plotted onto paper at scales which are difficult to manage manually when there are subdivisions which convert agricultural land into housing and urban land uses. The result is parcels too small to see on the maps. A second problem is the lack of importance given to incorporating changes in property boundaries into the index maps in accurate ways on the paper maps, and the subsequent updating of the digital map files.

The digital files are not being updated. New paper maps at more appropriate scales and with updated parcel boundaries are not being reproduced.

#### **4.6 INFORMAL TRANSACTIONS**

People express their opinions of governmental institutions by how much they interact with them. In the case of the IPRO, there appears to be a growing trend for people to conduct transactions outside of the Registration Local Offices, that is, informally. In economic terms, the transaction costs for completing the official registration process apparently are too high—standing in line and being subject to rude staff, having to make several trips to the Registration Local Office, and paying of high facilitation fees. Also by following the law's procedures for registering transactions, the parties to a transaction are typically forced to pay transaction taxes.

Even these costs might be acceptable to more people, if there was a widespread high value placed on registration of transactions due to the protection of rights provided by the Registration Local Offices and the legal guarantees of security of title registered in these offices. Since the notions of private ownership are new and not widely understood, and since the functions of the Registration

Local Offices as protecting rights of private ownership are not widely believed, many people are more inclined to engage in informal transactions than to incur the costs of formality through interactions with an agency like the Registration Local Offices, further complicated when such an agency is perceived as being corrupt.

For various reasons, particularly in areas where there is a high demand for land for housing, as people migrate to the cities in response to an often bleak rural economy, people acquire rights to land informally. They then build what they can, quickly, and dare the authorities to evict them, giving rise to the shanty towns or even more substantial informal settlements seen surrounding many cities. The extent of informal possession of land and informal transactions is a measure of the failure of the country's legal framework establishing the norms for urban land development and the legally established norms for the administration of the IRPO.

The parcel based, title registration system being introduced in Albania, as in other transition countries, is in danger of degenerating. In countries where the IPRO appears to be developing normally, we might ask why does this occur in one place and not in another. One possibility is that the positively evolving systems are more the result of strong leadership and strong public education and strong discipline by notaries. If such leadership weakens and people see a agency degradation developing, it will be hard even in these relatively successful countries (such as Kyrgyzstan) to avoid a downward negative cycle which other countries are already witnessing.

#### **4.7 ABSENCE OF COMPENSATION FOR DAMAGES DUE TO ERRORS IN IPRO INFORMATION**

For the IPRO to provide security to owners and to clients who use the IPRO information for transactions, the law establishes a mechanism for compensating users of the IPRO for damages that they suffer from errors in that information. The possibilities of collusion between Registrars and clients to arrange a "damage" and the lack of a fund and procedures for meeting compensation demands preclude the implementation of this theoretical feature of the IPRO.

#### **4.8 DECLINE IN THE CAPACITY TO COORDINATE INVESTMENTS IN A NATIONAL ACTION PLAN**

The Project Management Unit created in 1993 to implement the Land Market Action Plan had by 2001 lost the confidence of foreign donors to properly manage financial resources. By 2001, however, there had developed a capable "private sector" which could have been organized to take over the duties of the PMU. In 2001 project funding by the EU through the PMU was halted. In 2001 USAID cancelled its agreement with the UW for providing assistance to the PMU. USAID then brought in a new contractor, the privately owned U.S. company ARD, which contracted for first registration activities in coordination with the Chief Registrar, but without the involvement of the PMU. There was not sufficient political will among the donors or within Government either to re-organize and "professionalize" the PMU, or alternatively to make an institutional shift away from the PMU and develop an Albanian private sector or governmental management entity.

Rather than being advisors to an Albanian first registration administrative entity, ARD directly contracted foreign experts, rented and equipped new offices in Tirana and began directly conducting first registration activities. This company contracted some Albanian staff who had previously been contracted by the PMU, or contracted with companies which were formed by former PMU staff, so the accumulated capacities for first registration through the PMU were not entirely lost. This foreign private company direct involvement in first registration put more pressure on the Registrars and on the Chief Registrar to monitor and control the work of ARD and its subcontractors. This monitoring was made more difficult due to the primary orientation of the company and its



subcontractors toward ARD's client—USAID--and toward meeting its financial objectives. The Registrars were to insert themselves into the priorities of the private company, vigorously oversee the first registration work, while at the same time conducting the day-to-day operations of Registration Local Offices.

The originally envisioned policy, legal and institutional development work of the PMU in support of a properly functioning market oriented economy mostly ceased to be carried out by ARD in a coordinated way as had been the case to a certain extent when the PMU functioned well. Government has to date not taken the initiative to replace the PMU with a well managed Land Market Action Plan coordinating entity, and the foreign donors have reverted to direct project funding through foreign companies. A paralysis crept over the Action Plan idea, at least until the creation of ALUIZNI<sup>16</sup> in 2006 which attempts to link first registration for informally developed urban areas with the updating of urban infrastructure and urban planning.

## **5. REASSESSMENT OF OPTIONS**

Faced with these difficulties, what is to be done?

### **5.1 FIRST REGISTRATION**

The original idea of an Action Plan containing the overall strategy of building an IPRO and other land market institutions under the coordination of a well administered PMU has been abandoned. Neither the donors nor the Government appear to value such an approach. Under new political and administrative leadership in Government and in the donor community, that idea of building Albanian institutional capabilities could be resurrected. But clearly the process of re-building the consensus of 1994 about the desirability of this option would have to be re-started. There are experiences from other countries which could be instructive in this regard, particularly from Georgia, if a decision was made to return to this strategy.

Some changes in the initial PMU strategic role in the implementation of the Action Plan would have to be made, however, in any case. The creation of a government agency to carry out the legal and parcel surveying work involved in first registration of informal settlements, such as ALUZNI, appears to be a viable way to define property rights in the informal settlements. However, since ALUIZNI is a government agency, it is subject to personnel instability and political pressures similar to those which have in some instances weakened the IPRO. Also ALUIZNI is concerned with legalizing informal settlements, while there are many areas of the country which have not been incorporated into the IPRO which are not informal settlements.

To deal with first registration in general through private companies contracted by the IPRO, or to handle the sensitive property issues of informal settlements through ALUIZNI, some mechanisms are needed to give the people managing those processes of first registration some insulation from political pressures and strong professional orientations.

In any systematic first registration program, it should be done only in priority areas, that is, areas where local leaders, the Registrars and local government officials appreciate and actively support the functions of first registration. Included in this "support" should be community and village consultations and explanations followed by expressions of community support for the process.

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<sup>16</sup> Law No. 9482, dated 3.04. 2006, ON LEGALIZATION, URBAN PLANNING AND INTEGRATION OF UNAUTHORIZED BUILDINGS.

“Support” could also involve contributions from the banking sector whose income depends to a certain degree on loans secured by properly registered immovable properties. Monitoring of the first registration field work would have to be strict, as well as the display and correction of the results of first registration, with strong involvement of community leaders in these first registration processes.

Another change in first registration procedure would be the strict enforcement of legal requirements that governmental agencies and courts involved in the recognition of private and state ownership of immovable properties officially inform the IPRO of their actions, and carry out their actions in conformity with the first registration requirements of the IPRO. Copies of actions which modify the ownership of immovable properties and which meet the requirements of the IPRO must be sent to the relevant Registration Local Office in the legally required format and under previous agreement with the IPRO. Unfortunately this linkage between the privatizing agencies and the IPRO has not been respected sufficiently, resulting in public confusion and conflicts over the ownership of newly privatized properties and the ownership of public lands and buildings.

## 5.2 IPRO IMPROVEMENTS

Once first registration is complete, the theory of the IPRO should produce attractive operational results. But the reality of conditions and trends forces a re-thinking of what is being done to create such a system. Several ideas could be explored to modify the structure and procedures of the IPRO to salvage benefits from the investments already made:

- 1) Recognize that a modern IPRO requires administrative integrity that does not exist yet throughout Albania, especially in the main urban areas and along the tourist areas of the Adriatic coast where powerful interests can exert dangerous pressures on the staff of the RLOs. There is also no functioning warranty fund or procedure that can be invoked for compensation in the instances of false information in the Registries producing injury to parties to transactions. The Registration Local Office offers limited certainty to the people interested in transactions. What to do?
  - Strong efforts should be made to introduce procedures for doing title searches for all transactions for a period of years until the IPRO becomes more entrenched as a professional and respected institution. For example, the law should require that title investigations be done to search for defects in title, back in time at least to 1990. Investors and potential buyers should pay for this investigation of the roots of title and satisfy themselves that title has no defects, or if they detect defects, they must decide whether to risk the transaction.
  - Publish periodically all transactions that occur, so that everyone can see what is happening with transactions. Such a measure would discourage the “hidden” transactions that occur from time to time in some Registration Local Offices, which are done outside of the normal procedures and are of questionable legality.
- 2) Encourage the registration of transactions

A “carrot and stick” strategy is needed to draw people into the RLOs, on the one hand, incentives for registration, and on the other disincentives for non-registration:

- Assure that a “significant” immovable property tax is paid by the owners (registered and unregistered owners, *inter alia*, to provide incentives for sellers to be sure that transactions are registered). Such a significant tax should be actually collected first for

urban and peri-urban properties, since the market value of such properties is known and higher than for rural properties, and people can see what their properties are worth in comparison with the tax that they would pay.

- As the property tax is introduced, gradually eliminate or greatly reduce transaction taxes, one of the major cost factors which drives people away from the formal IRPS.
- Devise a system for regulating and moderating the fees and procedures used by notaries, independent of the system used to license new notaries.
- Give the general public rapid and efficient services at low actual costs. Of course as mentioned above there are presently strong incentives for charging “facilitation fees” and for making things difficult for people who do not want to pay such fees. Making the staff and Registrars professionals and disciplined is the obvious goal, but requires strong leadership.

3) Encourage Registrars and their staff to be professionals who serve the public:

- Devise ways for the local R.O. staff to be responsive to the needs of the public that they serve. One option is to have a Management Board composed of local people interested in the operations of land markets, to oversee the operations of the R.O. On such a Board in each District and one at the national level would be people from government and the private sector who are interested in the proper functioning of the IPRO, such as bankers, notaries, construction company owners, brokers, valuers, local land use planners and surveyors. Such a Management Board at the national level should at least participate in the selection of the Chief Registrar. A similarly constituted Board at the District level should have the ability to censure a local Registrar for unacceptable management of a RLO. The National Board should also be empowered to review and modify budgets prepared by the Chief Registrar, including fees for services. It should also have the ability to conduct “procedures audits” of any Registration Local Office at any time, and to take disciplinary action against employees in cases of improper behavior.
- Another option to move the R.O. staff toward being more responsive to the general public is through the normal democratic electoral process, that is, select Registrars through local popular election every two years, without party affiliation, to make them accountable to the local population, but without being subject to local or national political pressures.
- Oblige the Registration Local Offices to become gradually self sufficient in terms of their operational and investment budgets<sup>17</sup>. If the Registration Offices have to live on the fees they generate, they should be more motivated to attract people to bring their transactions for registration by making procedures simple and cheap.
- Make the Registration Local Offices “client” oriented, with the philosophy that such offices exist to serve their clients’ needs. Simply paying higher salaries to staff will not

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<sup>17</sup> The Business Plan of 2006 for the IPRO envisions its conversion into an Agency which would live on its revenues, and not rely on the State Budget. See that plan for the details of this proposed conversion. However, without significant improvements in IPRO leadership and professionalism, and staff discipline, then making the IPRO into a semi-autonomous agency will likely not produce the desired improvements in staff productivity and public confidence.

be sufficient. Moreover, particularly in a context where staff are frequently changed and have become accustomed to charging “facilitation fees”, a strong program for instilling an “ethic” of a new profession of Registrars is needed through training and continuing education and other measures.

- 4) Modify the legal and public expectations of the IPRO concerning the “mirror”, “curtain” and “certainty” principles:
  - People should understand that there is no guarantee or assumption that the information in the Registry necessarily reflects reality—the “mirror” principle is weak at best.
  - People interested in a property must do an investigation of title, i.e, there is no “curtain” principle.
  - The public should know that administrative defects require them to investigate title and that there is no other guarantee of title—there is no “certainty” principle.

Abandoning these fictions would imply that the parties to transactions, particularly the potential buyers and potential lenders would engage title search professionals who would verify the information in the Registry, would dig into the history of transactions back in time to 1990, and would give their professional opinion on the claims of title made by the presumed owners of properties.

- 5) Public education about the advantages of registered title in the IPRO and the disadvantages of not having their rights registered should have a very high priority in any project or program to create the institutions of a properly function immovable property market.
- 6) School for Land Administration—Specialization in IPRO

The IPRO is a new institution. The responsibilities of the staff and the complexity of their duties are much superior to those of the Ipoteka which it is gradually replacing. The turnover of staff is perhaps higher in the IPRO than in other technical institutions, due to the unfamiliarity of political leaders with the requirements of the IPRO. In any case, even with normal turnover rates, there is a need to find ways to prepare new staff for their responsibilities in this new and complex institution.

To improve the professionalism of the IPRO staff, a special training program is needed in the concepts and procedures of the IPRO for normal operations and for first registration. This is not a novel idea. For example, in Turkey to be a candidate for Land Registrar a person has to be a graduate of a two year technical school specializing in that profession.

Moreover, the IPRO is linked with several other public institutions engaged in the administration of property records, including those involved in the following land administration functions: restitution and compensation of ex-owners, property taxation, urban and regional land use planning, environmental protection, the privatization of State properties, the management of State properties, expropriation of private property for public purposes, providing affordable housing, and the agencies of government devoted to orienting immovable property markets for the sustainable growth of the economy. The staff of all of the agencies involved with these land administration functions should be provided with training to improve the professionalism of their work.

Equally important for the effective administration of land are privately employed professionals, such as: notaries, conveyancing attorneys, real estate agents, valuers, builders, bankers, surveyors, real estate development planners, real estate economists, GIS specialists,

and architects. To become experts in their professions their professional education prepares them to a certain extent. However, they typically lack more detailed training in the skills needed for effective land administration and in the responsibilities and procedures of public land administration agencies.

To move toward improving the professional effectiveness of people working in these various land administration fields, and particularly those working in the IPRO, we propose the creation of a training program, perhaps of six months duration, in the basic concepts and procedures of the various institutions of land administration, plus a specialization in one of these fields. Such a program would provide a certificate of competence for those who satisfactorily complete all the courses and the special courses in their specialization. The program would be financed by the students. The teachers will come from the country's pool of experienced professionals.

The result of all or some of these measures will be that the cost of transactions represented in fees will probably increase over what they are today. The cost of title investigation services and the Supervisory Board will be additions to costs of present procedures. But the modified IPRO will improve the probability that transactions will be conducted transparently and according to law. A modified IPRO will also increase the expectation that the evidence of ownership and other rights to immovable properties contained in the Registration Local Offices is valuable and useful for present and potential owners. With the elimination of the transaction tax, the total cost of transactions should actually decrease over what the total cost is today.

### **5.3 INDICATORS OF NEED FOR A RADICAL RESTRUCTURING OF THE IPRO**

Several of the problems afflicting the IPRS outlined above may be corrected with significant reforms, but some of them may indicate that a more radical restructuring of the IPRO should be undertaken. Three issues are particularly troubling:

#### **5.3.1. Leadership**

Of fundamental importance to the functioning of the IPRO is a clear commitment from the Registrars and the Chief Registrar, and particularly the Prime Minister and Minister of Justice to make critical investments in the IPRO from the IPRO revenues, and from the State budget if necessary. The most important failing in leadership has been the lack of updating of District index maps where there have been substantial modifications since first registration was done. The entire IPRO functions on the basis of well defined immovable properties. And the Index Maps serve to define immovable property boundaries. In many Districts, paper index maps are almost un-useable, and there is limited or no capacity to use the digital index maps. Updating the maps is not a difficult technical problem, but does require IPRO professional attention and carefully and clearly established procedures for verifying that boundary changes are correctly depicted.

If the IPRO leadership is not willing to apply the resources required for the fundamental activity of maintaining proper property delineations, then other procedures would be needed to describe properties being transacted. Moreover, the entire logic of the IPRO as a property based title registration system would have to be changed, since it would not be property based. The most obvious change would be to re-define the IPRO to be an Ipoteka type of registry, and require transaction agreements to contain verbal descriptions or individual survey descriptions of

properties, and not require reference to a comprehensive index map or the use of unique property identification numbers. Perhaps kartelas could be modified to be some sort of title abstract, containing a history of transactions and an index to the documents which describe these transactions archived in the District Registration Offices.

This drift from a property based, title registration agency to a Ipoteka deeds registry actually seems to be what some of the recent amendments to Law 7843 are proposing to do. See Annex 2. Such a drift is quite unfortunate since the advantages of a modern, parcel based registration system would be lost. Moreover, the significant investments made with substantial government, public, and foreign donor support in the past in the parcel based registration system would be tossed out. Moreover, Albania would be evolving into a property system out of step with European trends. Albania is at a critical point as far as its immovable property administration is concerned. Either the country vigorously re-affirms its commitment to correcting the major deficiencies which have developed in the IPRO and related institutions, or the chaos deepens and huge future costs in time, money and political conflicts will drain the country of the energies of a properly functioning market economy.

### **5.3.2 Public Support to the IPRO**

The second issue that needs more clarity is the extent to which transactions are occurring without people registering their transfer agreements. It seems that a high percentage of transactions are being done informally. Maybe 50% or more. Some observers have stated that over 80% of the new housing in urban areas has been done outside of legally requirements, probably also including not registering the subdivisions and transactions in the IPRO. In 2002, a study found that 95% of the transactions were being done informally in Kamza. If that informality of transactions is generally the case, then the proposal to better educate the public about the importance of registration will fail, since it seems likely that the problem is not ignorance of the public. Nor is the proposal to computerize the administration of property records likely to have any effect, since it is also likely that the problem is not slowness of response of the Registration offices, due to lack of computers. It seems more likely that people do not register their transactions because of the "distance" separating them from the Registration Offices. Such distance contains geographical, social, and economic dimensions.

## **5.4 IMPLICATIONS**

If leadership does not strongly support the basic features of a parcel based title registration system, and if people do not value the IPRO in its present form, then other responses have to be fashioned. We should assume, for example, that many people will not register their transactions, even after excellent and accurate first registration. What does that mean for the systematic first registration work and for sporadic registration?

A more radical approach may be needed if the IPRO loses many or most of its original features. In such a situation, it would be difficult to envision how marginal reforms can succeed. But we can consider various options for improvement of the IPRO without abandoning hope.

### 5.4.1 Link Property Records with Property Taxation

Perhaps the registration functions can be combined with the land tax administration at the local level, where there is a land tax, and where the proceeds from that tax at least partially remain with the local government unit for financing schools and local infrastructure. In Georgia the local community unit of self governance—the Sakrebulo—collects land taxes and in some cases these Sakrebulo are “registering” transactions to keep their tax rolls up to date. In the Sakrebulo there is an interest in maintaining land ownership records, while in at least some Registries, there is a primary interest in getting fees from transactions.

In Albania there is no systematic land tax. There are, however, some property related taxes collected:

<b>Name of tax</b>	<b>Rate</b>
<b>Tax on sale of agricultural land</b>	0.5% of the sale price
<b>Immovable Property Tax (Urban)</b>	Residential Buildings: Ranges between 5-30 Lek/sq. meter/year depending on the municipal zone. Commercial & Other Buildings: Ranges between 20-200 Lek/sq.m/year depending on the municipal zone.

For residential and commercial buildings, municipalities are interested in maintaining lists of buildings, their location and area, and their owners who are expected to pay the tax.

In some municipalities, there are also infrastructure investments being attempted, such as in the Kamza municipality on the fringe of the Tirana municipality. This project to install water, sewage, and transport infrastructure is of great interest to local residents, and requires that local residents contribute part of the cost of that infrastructure, in proportion to the amount of land they claim to own. In the community itself, there is interest in maintaining property records so that all landholders contribute fairly to the infrastructure cost.

Such local registration services also would have the opportunity and interest in systematically improving the quality of information concerning ownership and other rights and boundaries, and would be accessible to a public also interested in correcting the records so as to avoid tax liabilities or to be able to assure the fair contributions to infrastructure investments.

It remains to be seen, however, whether this intention of maintaining of the property records locally will be realized in such conditions.

### 5.4.2 Multi-purpose Local Government Document Administration Offices

One alternative which could be considered is to combine the transaction registration functions with other document registration functions carried out by an administrative office the lowest level of local government where officials are elected. Vehicles are “registered”. Companies are “registered”. People’s births, deaths, and marriages are “registered”. Building permits are “registered”. Health certificates for restaurants, water sources, slaughterhouses, etc., are “registered”. A local clerk’s office could be assigned all of these registration functions, and a common secure archive for all documents created and maintained. At present these documents are registered in many different offices, some of them in the national capital and not in the Districts. The logic for this approach has been tested and is in use in many countries around the world (many

states in the USA, Mozambique, Ethiopia, etc.). It would make the registration offices more accessible to local people and would use the advantages of economies of scale to introduce information technologies based on large but varied numbers of transactions rather than having to resort to centralized registration offices based on single type of documents to be registered.

### **5.4.3 Notary Based Registration**

If the negative trends of today continue uncorrected, Albania can move back in history to more primitive models. One such option is to revert back to the old historical model prevalent in much of Europe prior to the Napoleonic reforms of private Registration Local Offices, usually run by notaries who draft and record transaction documents in their office archives. They normally pass their archives of transaction documents to successor notaries, with qualification requirements for notaries and adequate regulations. Typically such an approach allows more than one notary to function in each administrative area to introduce competition and hope that such competition will improve registration services. Variants on such a system are still used in Haiti, Ecuador and Chile, among other countries.

## **6. CONCLUSIONS**

It seems clear that serious adjustments to the IPRO model or a more radical re-structuring of the registration function need to be explored for meeting the real needs of the people of Albania. Of course there is also the need to rescue at least some of the major investments made to date in creating a modern, parcel based registration system in Albania.

Similarly, the resolution of pending, serious problems with the legal, policy and institutional framework for a properly functioning market oriented economy requires sustained attention.

Finally, the reputation of Albanians to properly administer foreign donations and credits has suffered in recent years, with the PMU and the IPRO being frequently criticized in the public media as deficient agencies. But in the recent past the Albanians have shown themselves capable of responsible administration. The city of Tirana, for example, is a demonstration of how energetic leadership can radically improve a disastrous public administration situation. It remains to be seen how the country's leaders decide to deal with the problems of the IPRO.



## **ANNEX 1: PROBLEMS OF THE IPRO AS IDENTIFIED IN THE 2006 MODERNIZATION STRATEGY**

“The major issues faced by IPRO in achieving its aims and objectives are as follows:

### **1. The IPRS system is incomplete.**

There is still considerable unregistered land – estimated at 1.2 million parcels. IPRO has not yet achieved its statutory function to maintain and keep an accurate and guaranteed land register of legal interests in land and property in Albania. The number and location of cadastral zones still to be completed is shown in Annexure 1.

### **2. Lack of formal staff training and procedural guidelines**

This affects the quality of work and the efficiency in which the work is undertaken.

### **3. Inadequate service delivery**

Procedures for receiving and responding to customer requests do not match the levels of a modern service organization.

### **4. An increasing workload**

The ever increasing volume of business means that continual improvements in the efficiency of work processes are required.

### **5. Lack of updating of digital information**

The kartela and registration index map are initially produced in digital form but the digital databases are not being updated as changes occur. This digital data forms the basis for the future automation of the system and it is imperative that its currency be maintained.

### **6. Poor quality of paper maps.**

The paper registration index maps are becoming cluttered with updates and at the same time are deteriorating from wear and tear.

### **7. Inadequate management accounting systems**

The bookkeeping and financial recording structure does not provide a base for creating managerial accounting and enabling it to produce financial management tools.

### **8. Not all land dealings are being recorded in the system.**

The existence of an informal system outside the registration system results in the registration system information becoming out of date and not according with the reality on the ground.

### **9. Allocation of resources (staff and funding) to district offices done on ad hoc basis.**

Staffing and budget allocation does not always relate to workload.

### **10. Lack of physical resources**

Many district offices are inadequate for their task by virtue of poor accommodation and lack of equipment.

### **11. The need for IPRO to perform functions for other agencies**

The additional functions that district offices carry out for other agencies affects their capacity to carry out their core functions.”

## **ANNEX 2: AMENDMENTS OF LAW 7843**

### **Report on the draft law**

#### **"ON SOME AMENDMENTS TO LAW NO. 7843, DATED 13.07.1994 'ON REGISTRATION OF IMMOVABLE PROPERTY' "**

The draft law "On Some Amendments to Law No. 7843, Dated 13.07.1994 'On Registration of Immovable Property'" is aimed at the improvement and abrogation of some of the provisions of this law, in order to ensure a qualitative move in the immovable property registration.

During the daily activity of property registration has been noticed that the content of some provisions of the law in question has resulted to be an obstacle to the running of the process and to a better interaction between the Central Immovable Property Registration Office and the Local Immovable Property Registration Offices. Thus, we have considered as appropriate to undertake the following initiative for the amendment of the Law No. 7843, dated 13.07.1994.

Under the conditions where the IPRO new structure, as approved upon Order no. 83 of the Prime Minister, dated 10.05.06, establishes the position of the deputy chief-registrar, being an essential function in the IPRO activity, it is necessary to have provided for by law the latter's modalities of appointment and removal, for which we think should be responsible the Minister of Justice, based upon the proposal of the Chief-registrar. Making the position of the deputy chief-registrar a legal function, such a definition provides him/her with the due authority in the CIPRO structure.

At the same time, the proposed amendments shall not only result in a better harmonization of the relations between the chief-registrar and the registrar, but also the enhancement of the authority and prestige of the Central Office, which, referring to the volume and importance of activity, is ranked among the independent institutions of the Albanian state. Further, it will enable the reduction of the daily burden dealt with by local offices with the public.

Specifically, below are listed the motives of the required amendments:

- It has been foreseen an addition in Article 3, through which the Central Office employees shall benefit the civil servant status, adjusting thus a relation already applied in some institutions subordinate to the Ministry of Justice like the Prisons' General Directorate Administration.

- The change of the second paragraph of Article 4 shall not only strengthen the authority of the Chief-registrar as related to the registrar, but shall also influence a better harmonization of relations between the two. The attributes placed on the chief-registrar according to definitions of the paragraph 1 and 2 of this article, are impossible to be fully exercised, because the latter is not vested with the authority to appoint and remove the registrar, but is only able to propose either the appointment or removal to the Minister of justice. Such limitation of the Chief-registrar right might have a negative impact on the process and in order to illustrate it, we could mention the case where the chief-registrar proposes the removal of the registrar but the measure is turned down by the Minister. In other words, the accountability is closely related to the authority and administrative power attributed to the chief-registrar in relation with the registrar.

- Articles 13, 19 and 20 are proposed to be abrogated, as they have turned into useless provisions, since they have never been implemented and they are really inapplicable.

Article 13 provides for the right of the Registrar to require the mandatory registration of ownership documents, at a time when Article 12 sanctions the right of anyone to register these documents even beyond the 30-day term from the application of the act (as provided for in Article 11) with an addition of 10 % over the registration fee for every day following the deadline.

Articles 19 and 20 which deal with the preservation and damage of the property boundaries not only transfer the activity of the registrar from the office to the field, meaning that his/her authority goes beyond the registration process of ownership titles, which is the function of the office, but most importantly it makes it impossible for the registrar to exercise physical control on all the boundaries of immovable properties located in the territory under his/her jurisdiction, let alone to achieve identification of those violating boundaries and fine them.

- The change of the last paragraph of Article 21 results to be necessary considering the way of its interpretation and application to date. Due to its misinterpretation acts have been carried out in contradiction with the provision of the law "On Co-ownership of Houses", accepting the requests for the division and elements of an apartment for habitation which the law in question prescribes as an undivided unit, resulting, thus, in anti-legal consequences.

- The proposed changes to Article 24 are conditioned by the abrogation of some laws which are referred to in subsection "a", the unclear definition of subsection "b" in its current form, as well as the confusion caused by the definition "yard in use " in the relations between the office and the public. At the same time, this proposal is also conditioned by the way this provision has been applied so far.

Referring to the entirety of the cases where the property documents do not have the surface marked, so far has been followed a procedure which has been more of a practical rather than legal character, and that has been rejected by the High State Audit, which does not recognize as competence of the immovable property registration office to establish the surface area of a property, given that an administrative body cannot regulate the right of property, as the surface area is not yet determined, as a key element of the description of the immovable object. In the meantime, courts have refused in many cases to take up examination of suits the object of which was the establishment of the land surface area, excluding them from their jurisdiction with the argument that, based on Article 24/b of Law No. 7843, dated 13.07.1994, it is the registration office which has the competence and jurisdiction to address such cases. Supplementing such provision, we create the possibility that the procedure on the establishment of the surface area take over a full legal character, by determining also the state competent body vested with the authority to handle the issue of establishing the property surface area.

The required addition of a paragraph on functional yards is asked for the following motives:

The Law No. 7491, dated 29.04.1991 "On Main Constitutional Provisions", abrogated the Constitution of the Socialist People Republic of Albania, approved on 28.12.1976, which enshrined that all immovable properties were state-owned. Under these conditions "the functional yard" is the arrangement of a juridical relation which has been addressed by the State Committee for Property Restitution and Compensation, in function of the Law No. 7698, dated 14.04.1993 "On Restitution and Compensation of Property", regardless of any judicial precedent. This is result of the fact that this is a real ownership right, which turned into a right of use of ownership right, according to the

Constitution of 1976, but now could again turn into a real propriety right by the SCPRC, according to Law No. 9235, dated 29.07.2004 "On Restitution and Compensation of Property to Ex-Owners."

- The proposed amendment to Article 55 emerges as a need due to the fact that this provision contradicts Article 12 with regard to the financial obligation which the interested party submits to in those cases where the latter does not show up to carry out the registration of the act within 30 days from the day of its completion.

**CHIEF-REGISTRAR**

**Edlir VOKOPOLA**

**In absence and on authorization**

**First Registration Coordinator**

**Alkend SHPENDI**

**L A W**

No. \_\_\_\_\_, dated \_\_\_\_\_

**ON**

**SOME AMENDMENTS TO LAW O. 7843, DATED 13.07.1994**

**"ON REGISTRATION OF IMMOVABLE PROPERTY**

Pursuant Articles 78 and 83, section 1 of the Constitution, upon the proposal of the Council of Ministers,

**THE ASSEMBLY OF  
THE REPUBLIC OF ALBANIA**

**D E C I D E S**

**Article 1**

The second paragraph of Article 3 shall be changed as follows:

*"The Central Immovable Property Registration Office is headed by the Chief-registrar and the deputy chief-registrars.*

*The Chief-registrar is appointed and removed by the Prime Minister upon proposal of the Minister of Justice.*

*The deputy-chief registrars shall be appointed and removed by the Minister of Justice upon proposal of the Chief-registrar and in absence of the former may exercise all the rights conferred to the Chief-registrar by this Law."*

A paragraph is added after the second paragraph of Article 3 with the following content:

*"the Employees of the Central Immovable Property Registration Office are civil servants whose work relations are regulated by the Law No. 8549, dated 11.11.1999 'Civil Servant Status'."*

## **Article 2**

The second paragraph of Article 4 is changed as follows:

*"The Local Immovable Property Registration Office is organized and supervised by the Registrar. The Registrar and the other employees of this office shall be appointed and removed by the Chief-registrar."*

## **Article 3**

Articles 13, 19 and 20 are abrogated.

## **Article 4**

The last paragraph of Article 21 changes as follows:

*"The Registrar does not allow in any case whatsoever the alienation of the ownership annulling the real rights. If an owner wants to divide into parts his/her immovable property, the registrar requires him a topographic plan or a plan of the proposed subdivisions, prepared by a licensed expert and certified by the relevant body as in compliance with the laws in power. In no case whatsoever shall the registrar allow the division of properties qualified as undivided."*

## **Article 5**

The following changes are made to Article 24:

1. Letter "a" changes whereby:

*"The ownership and boundaries of the immovable properties are established by the acts of obtaining the ownership which meet the conditions provided for by Article 193 of the Civil Code of the Republic of Albania."*

2. Letter "b" changes whereby:

*"The individuals, families and private or state legal persons who possess ownership documents as referred to in letter "a" but do not have the surface area of the land established have the right to submit to the registrar a request for property registration, which should be accompanied by the ownership document, a plan of location or a general plan of the property, the notarized declarations of the neighboring owners that certify what is stated in the request with regard to the property and the boundaries of the claimed property, as well as copies certified by a notary of the various documents supporting the request for registration."*

*The number of persons and the composition of groups to implement such procedure shall be determined by the Central Immovable Property Registration Office.*

3. Letter "c" changes whereby:

*"In those cases where the property document contains the note "yard in use" for the transfer of the surface area in ownership, the interested party should address the Committee on Property Registration and Compensation."*

## **Article 6**

Article 55 changes whereby:

*"Any de4claration or action falling in contradiction with Articles 24, 44 and 45, when they do not consist of a criminal offence, is punished with a fine of Lekë 5,000-50,000 by the registrar. Against the decision for punishment a complaint could be filed by the First Instance Court where the penalty has been committed within five days from the day of announcement.*

*The examination of the administrative circumventions and the execution of decisions shall take place according to the legal provisions.*

## **Article 7**

This Law enters into force 15 days after the publication in the Official Journal.