

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

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

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

1. Introduction

A massive transformation of land management is occurring worldwide from being located in institutions for "public" decision making about how people decide how to use land¹ to a substantially greater degree of "privatization" of land management. The moving force behind privatization of land management (defined as decision making about how land is used) is the political economic decision to establish dynamic market economies². Markets in land linked to markets in capital and labor are central to market economies. Land markets in the future market economies are to function to decide who has access to land and how the land is used, instead of the planned political economy's institutions which has exercised these functions for 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 land³) must also change radically.

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

This paper describes (1) the processes of privatization of land management in selected transition countries and (2) the post-privatization changes in land administration institutions which are being crafted to establish desirable markets in land.

We begin with the proposition that there are similar land market institutional problems which most "transition" countries are facing, due largely to the common experiences in creating command economies during the past 50-80 years and the almost simultaneous decisions of these countries to move toward market political economies in the late 1980's and early 90's. Each country has had unique historical experiences, but we propose that there is enough similar institutional history among the transition countries to venture into comparative analysis.

In this regard, we present the Albanian land market institutional development experience as being potentially relevant to experiences in other transition countries of Europe and the Former Soviet Union.

The broad question is, how can countries construct the institutions of immovable property markets once they have made the political/economic decision to "go market"?

2. Privatization

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

(1) the right of the private "owner" to the continuous and exclusive use and enjoyment of the property,

and (2) the right to transfer this right of exclusivity through private contracts (such as sales, leases, inheritances) to other people. These transfers are commonly referred to as land, real estate or immovable property market transactions, and include sales, leases, gifts, and inheritances.⁴

The most common meaning of privatization in the transition countries is the transfer the right of exclusive use of land from the state's enterprises to individuals, families, and/or companies. This exclusive use may be conditional, such as in Albania where the law states that people who receive use rights to agricultural land and who do not in fact use it within one year of the transfer of ownership, lose the right⁵. Another example of this type of privatization is Kyrgyzstan, where the lifetime, inheritable use right is conditioned on the proper use of the land⁶.

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

"The instant I enter on my own land, the bright idea of property, of exclusive right, of independence, exalt my mind. Precious soil, I say to myself, by what singular custom of law is it that thou wast made to constitute the riches of the freeholder? What should we American farmers be without the distinct possession of that soil? No wonder we should thus cherish its possession; no wonder that so many Europeans who have never been able to say that such portion of land was theirs cross the Atlantic to realize that happiness. This formerly rude soil has established all our rights; on it is founded our rank, our freedom, our power as citizens, our importance as inhabitants of such a district.⁷"

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

--In Albania, the agricultural land was assigned by the Land Commissions in "ownership" in 1991-1993, but the right to sell was illegal until 1995, and is in practice still not possible to do legally⁸.

--In Romania, some of the ex-cooperative lands which have been privatized through Law 18 (5 million farms, 23 million parcels, 8 million hectares) cannot be sold for 10 years and another portion are subject to the right of the proposed Agency for Rural Development and Planning (ARDP) to pre-empt any proposed sale, i.e., oblige the seller to sell the land to the ARDP under certain circumstances⁹.

--In Bulgaria, the state's enterprises have privatized land through leases, i.e., the right of the lessee to use the land and keep the profits generated, but not to have full transfer rights¹⁰.

--In many of the Former Soviet Union countries, agricultural land is transferred from the state to private holders as lifetime inheritable use. If a using family no longer want to use the land, the state re-acquires the land for assigning it to another user. In some countries the law has been modified to allow the holders of these tenures to transfer them, although with some approval requirements, and to have the right of use for 49 or 99 years, rather than for "life".¹¹

--In yet other FSU countries, such as Dagestan and Kazakhstan, the emphasis has been on privatization through the issuance of shares in enterprises or the re-organization of collectives into smaller albeit new forms of corporate or cooperative ownership, rather than the extensive allocation of specific pieces of land to private holders, even as lifetime, inheritable usufructs. Nonetheless, some parcel privatization has occurred in these more cautious countries, in the form of land use rights for specific building sites or dachas¹².

--Restitution of land in ownership to previous owners has been a common strategy in Eastern Europe, with some limitations on the amount of land restituted. In some countries physical pieces of land have not been restituted, but rather shares in the collective enterprises have been provided to the ex-owners or compensation in some other form¹³.

3. The Institutional Challenges of Privatization for Land Administration

The privatization of rights to use the land without including the right to transfer produces a need for land administration systems which record the use rights granted and provides for adequate supervisory public agencies monitor use and take disciplinary measures when uses are not in conformity with law, a subject for another paper. The more difficult task comes with the subsequent granting of transfer rights as well as use rights. Many transition countries are moving from the privatization of use rights toward more ample privatization, i.e., the re-definition of the rights of the private holders of land to include the right to transfer their properties to other people.¹⁴

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

(1) when people are private owners, secure in their rights and secure in their expectation to reap the benefits of their work and investments including the expectation of being able to sell their properties if they decide to do so, they invest in their properties, and they can convince lenders to provide them capital to make such investments¹⁵;

(2) private ownership focusses attention of the owners on finding the most profitable uses of their properties, yielding higher economic output from better management¹⁶ in comparison with state ownership models.

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

(1) Fragmentation. privatization means the division of public property into many private units, which can reduce the economies of scale achieved with larger enterprises. Rapid technological shifts compatible with smaller scale economic organization are necessary as well as are new forms of cooperation among these smaller scale economic organizations¹⁷.

(2) Environmental Degradation. The shift to private ownership of the land can produce negative environmental effects. The prevailing view of public ownership of land is largely negative, being an identifying feature of the rejected, previous regime. This negative view leads people to trash the land remaining in public ownership, and for the country's leaders at best to be against investments in "non-private" activities and at worst in favor of the active externalization of the costs of private enterprise without anyone or

any agency picking up those costs¹⁸. Moreover, the newly private owners of formerly public properties in a context of increasing economic and political crisis may decide that making long term investments in their newly acquired properties is too risky, and will opt for extraction of immediate profit from their private assets, leading to the over-exploitation of their assets and a spiraling downward of the productive and natural resource base.

(3) Social Polarization. Programs for the privatization of land can create or contribute to tensions between the propertied and the property poor in several ways:

--The transfer of state owned assets to private owners in transition countries is only superficially similar to such transfers in capitalist countries. The predominance of the state bureaucracies in transition countries produces opportunities for people in positions of bureaucratic power to get disproportionate access to the privatized properties.¹⁹

--In some countries, privatization has favored or threatened to favor one ethnic group over another²⁰.

--Imperfections in transition countries' capital markets produce problems in the land markets²¹. When lending institutions begin to function, lending is restricted to short term, high yielding projects for a few borrowers. On the capital demand side, the lack of functioning capital markets means that only people with accumulated capital of their own, frequently from expatriate remissions or from "illegal" activities, participate in land markets.

The danger is that a few people or companies which manage in one way or another to take advantage of position, ethnicity or restitution claims to acquire a disproportionate share of privatized properties, or manage to get disproportional access to capital, will dominate the land markets as they emerge, setting the stage for the polarization of the society into a few landlords and a mass of people without property²².

The challenge to the transition countries is to achieve the positive aspects of the shift to the institutions of private land markets and somehow minimize the negative aspects.

Without a clear commitment to privatization of land and other fixed assets, and without including in the rights of the private holders the right to engage in land market transactions, there is little likelihood that the expected economic and productive benefits of the market economy model will materialize.

Without a clear commitment to dealing with the negative aspects of land markets, social tensions and environmental problems will accumulate and threaten to undermine the positive aspects of the shift to market institutions. The institutional challenge of land administration in transition countries is how to get land markets to work more positively than negatively.

4. Making Land Markets Work "Properly"

Even with a strong commitment to creating private ownership rights, including the right to transfer properties, there is no assurance that such markets will function without substantial investments in other institutions which buttress land markets. Albania has developed a project to create these institutions, re-fashioning some, creating others.

4.1 Market Dynamism and Access

Three types of land market institutional investments are being made in Albania for getting land markets to work in a dynamic way and which are easily accessible by even disadvantaged sectors of the population:

Registration.

An institutional capacity to provide accessible, accurate, cheap and legal evidence as to who owns (and holds other rights) land, i.e., a system for registering rights to land. An effective registration system makes transactions easier, since buyers of rights can be relatively secure in their belief that they are dealing with sellers who are legal owners of the rights and have the legal right to sell. An effective registration system makes information about property rights easily accessible, at low cost to the general public, in order to keep transaction costs low, and not prejudice the rights of disadvantaged sectors of the population. An effective registration system helps encourage private investments and thereby make the economy grow, since it helps convince the registered holders of the land that they will profit tomorrow from the investments which they make today²³.

Market Facilitating and Guiding Laws.

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

Market Professionals.

A network of competent and accessible professionals in support of land markets is necessary to assure that people know their rights and responsibilities as owners, and that transactions are carried out in the legally prescribed ways. This network is typically composed of: a) lawyers and judges well versed in the new legal framework for privatization and for the protection of rights and enforcement of responsibilities of the holders of the privatized rights; b) specialists in

conveyancing (notaries or lawyers or both); c) real estate brokers who provide information to the public about land available or desired; d) assessors of land values who advise market participants on the appropriate price to be paid for any piece of land; e) land surveyors who describe the location and boundaries of land parcels; administrators of land use regulations which impose certain restrictions on the rights of owners to use the land.

4.2 Albanian Action Plan for Immovable Property Registration and Other Market Programs

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

4.2.1 Creation of a comprehensive Immovable Property Registration System.

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

This comprehensiveness of the registration system is distinctive. In Romania, for example, as in other Eastern and Central European countries, the tendency has been to search in their pre-1946 past for institutional models for re-creating their dual systems of registration and cadastre²⁴.

This tendency to look backward in history for models rather than analyzing their present and future needs without constraining the solution ignores the cost of subsequent modernization²⁵. Romania's decision to adopt what is basically the traditional Central European model for immovable property registration with separate cadastre²⁶ does not appear to be informed of the problems of that institutionally bifurcated system which have been the cause of much distress and expenditure of funds in recent years in several European countries. For example, Austria has been investing several million dollars for the past 8 years in unifying the cadastral mapping institution with the land registration offices, not through actual merging of agencies, but through the use of a common data base by the cadaster and registration offices. Switzerland is investing \$1.3 billion dollars in the modernization of its immovable property registration system, much of which is being devoted to correcting the problems which derive from there being two separate institutions. Hungary opted two decades ago to unify the cadastral mapping and registration offices.

Some Eastern European countries have apparently not been systematic in their evaluation of options, but rather have assumed that the pre-war, traditional registration+cadaster model is the best long run model, and are adopting a system with demonstrated problems which other western European countries are spending substantial sums of money to convert into some semblance of a unified registration/cadaster system. Within a few short years, these Eastern European countries

may join the rest of Europe in rejecting the bifurcated system, but then they will have to make multi-million dollar investments to un-do what they have just done.

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

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

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

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

The viability of a computer based registration system linking various agencies which presently record rights to real estate is very doubtful under conditions of Kyrgyzstan as well as at least the former FSU countries in crises:

--there is very limited experience and capability for creating and maintaining a complicated network of computers in other than the major cities of most countries. If a computer malfunctions in most Rayons of the country, repair and maintenance help is usually not readily available. Systems design and testing, as well as the design of security procedures, anti-virus protection, back-up file management and maintenance of computer systems require substantial investments in people which should begin, but the registration offices should not be dependent on these investments in the medium term²⁷. If the registration system is dependent on computers which become inoperative, many people will get very annoyed when they try to register transactions or to get certificates of their ownership rights.

--In the emerging economic crisis, the electric network will be unreliable probably for several years. Computer systems do not work on batteries or manual generators.

--the cost of maintaining several registration bureaucracies is much higher than combining registration functions into a single institution. The present transition has seen several institutional innovations and reorganizations, and will require more. Better do it

now when there is momentum for change. This argument means, however, that the country's leadership has to transfer functions, staff and budget from existing registration agencies to the unified system, which is a costly and difficult task.

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

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

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

The effort to create the new Registration System is planned to last through 1998 in order to "first register" all properties, urban and rural, publicly and privately owned for the entire country. The steps of first registration are:

--The creation of Registry Index Maps, i.e., the mapping of what land that people actually possess and to which they claim some right within a specific geographic zone at an appropriate scale. The geographic zone is called Cadastral Zone in Albania, which in practice coincides with the smallest administrative unit of the country--the village. In cities, Cadastral Zones are created to coincide with neighborhood or rayon boundaries, so that no more than 1500 properties are found within them.

--The checking of the claims with privatization documents issued since the installation of democratic government in 1991.

--For private houses which families have possessed prior to 1991, and to which they presently claim ownership by inheritance or prior purchase, a special procedure is provided by the Registration Act to get these properties onto the Registry.

--Preparation of "kartelas", one for each land parcel or apartment (or other part of a building which is distinctly owned) and the subsequent creation of a data base from these kartelas. Each kartela contains information on the geographic location of the property, its unique identification number, its size, the name or names of the owners, holders of subsidiary rights (eg., leases or easements) and holders of mortgage rights.

--Preparation of lists of owners and their properties within defined geographic zones, called in Albania, cadastral zones.

--Public display of the Registry Index Maps and property lists in a prominent place in the Cadastral Zone for 90 days, with procedures for correcting the kartelas and maps.

Once "first registration" is completed by the PMU/IPRS field teams, the kartelas, registry index maps and title documents are passed to the Registration Offices.

The main ownership interests being "first registered" include:

-- family ownership of privatized ex-cooperative agricultural land;

--family usufruct for some privatized ex-cooperative and ex-state farm parcels, and the conversion of others into ownership;

--individual or joint ownership of privatized apartments;

-- individual or joint ownership of businesses;

-- individual or joint, private ownership of restituted properties within the yellow lines of municipalities;

-- private ownership of property based on court determinations of ownership or on documented pre-1991 ownership of homes;

-- public ownership of agricultural land which was not privatized, as well as of roads, canals, parks, forests and other public properties.

Subsidiary interests which transfer the rights to use properties from owners to other users are also registered, including the leasehold of state owned land or privately owned properties, restrictive agreements, and easements.

Interests which restrict the dealing in immovable properties are also registered, such as mortgages (commercial as well as "legal"), and Registrar or court ordered cautions against dealing in specified immovable properties.

4.2.2 Institutional Issues Encountered in the Registration Component of the Action Plan

Partly as predicted in the United Nations' Economic Commission for Europe publication "Guidelines for Land Administration", and partly not dealt with in that publication, the major institutional issues encountered in the Albanian effort to create a new, comprehensive immovable property registration system include the following:

-- Inter-governmental Coordination

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

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

-- Investing in the Geographic Information Infrastructure

A major problem has arisen concerning how the PMU/IPRS should invest in what has been called the "geographic information infrastructure"²⁸.

Since the beginning of the implementation of the Land Market Action Plan, there have been difficulties concerning the use of equipment acquired for producing the Registry Index Maps required for the Immovable Property Registration System.

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

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

- _ The Military Topographic Institute which produces topographic and thematic maps 1:10,000 and smaller, but which operates under the remnants of regulations which regard geographic information as state secrets;
- _ Land Research Institute, which has produced land use maps for agricultural enterprises, 1:5,000, but which no longer has these clients following the privatization of all state agricultural cooperatives and enterprises;
- _ Autonomous Geology and Geodesy Company, which has produced maps of buildings and roads for urban areas, 1:500 and 1:1,000 for the Ministry of Construction, but as the privatization of construction is progressing, this newly privatized agency is not secure in its funding from the Ministry;

_ and the Geographic Institute of the Academy of Sciences, a research entity which has produced thematic maps of various scales and which has installed ArcInfo, but which has little production capabilities and a history of non-cooperation with the production agencies.

The dilemmas are: (1) if the PMU/IPRS makes capital investments in these "old" state institutions by providing them with new technology, without them first making the organizational and staff changes required for the new political economy, the country risks the loss of the capital invested should these agencies disappear. About as bad is the risk that the old state organizations will use financial support to delay making necessary organizational changes thereby only delaying the transition;

(2) moreover, if the PMU/IPRS invests in these "old" state agencies, it does not help encourage the growth of the infant private sector which will be a major actor in the field of geographic information in the future;

and (3) if the PMU/IPRS simply puts off the acquisition of new technology and does not acquire the technology now, it risks losing the investment capital available now as donations from international agencies.

An interim institutional strategy which has been adopted by the PMU/IPRS is the following:

_ The PMU/IPRS continues to acquire new technology with the investment capital provided to the Action Plan, and retain the ownership of that equipment for the duration of the Action Plan.

_ The PMU/IPRS carries out tenders to select companies for providing the specialists and supervisors required to produce the geographic information, with the PMU/IPRS providing specified equipment to be used by the selected contractor. Any private company or governmental agency with the technical capacity for the required work is invited to bid on the tenders. The bids are evaluated primarily on the technical level and experience of the personnel they propose plus their quality control proposals, and secondarily on their cost proposal.

_ The PMU/IPRS provides the winning bidder with the equipment it has available.

_ Payment by the PMU to the contractor is tied to the quantity of work done, so that the contractors have an incentive to maintain the equipment loaned to it by the PMU.

_ Once the Action Plan is completed, the PMU will sell the used equipment at auction and transfer the funds generated to the budget of the Chief Registrar.

-- Developing the Geographic Information Infrastructure (GII)

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

Presently in Albania there has been little investment in the Geographic Information Infrastructure after the systemic crisis of the 1980's and the shift to the market economy model after 1991. The recent development of geographic information (GI) technologies throughout the world provide some useful techniques for the linking of GI with public and private decision making about investments. Albania could take advantage of this technology quickly. However, there is a danger that if different Albanian organizations acquire different GI technologies, there will be problems of compatibility of information and needless multiple investments in maintenance of GI and training of the using public.

The Albanians have considered several ways to avoid these problems:

- _ Channel all GI investments through a single state institution. However, this option would probably not allow the rapid introduction of GI technologies and would suffer the well known problems of coordination between the state and private companies.

- _ Combine existing state agencies which produce geographic information into a self financing stock based company, privately and publicly owned which would combine the capital resources of existing mapping entities:

To date these agencies have not been willing to join together in a single GI corporation.

- _ Create a GI Coordination Committee from all or some of these agencies, which would develop ways to coordinate GI investments in separate state agencies. Legislation has been prepared to create this committee, but interest has been limited to the Department of Geodesy of the Faculty of Engineering, University of Tirana, the PMU/IPRS, the Military Topographic Institute, and the Land Research Institute.

- _ Government could create a special GI Coordination Unit, with specialized Albanian staff and with the participation of foreign advisors nominated by international donors interested in supporting GI development.

Given the difficulties encountered with the first three options, serious consideration is now being given to the fourth. Under this option the Government could take two simple but important steps:

- 1) create the GI Coordination Unit as an independent economic entity, but reporting to an appropriate governmental entity;
- 2) request foreign donor agencies to provide funding and technical assistance to support the Coordination Unit. Donors would be asked to agree to coordinate all funding with this Unit.

The GI Coordination Unit would have several responsibilities:

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

-- Centralization/Decentralization

The Registration Offices are designed to be self contained, i.e., they have the power to register changes in parcel maps or kartelas when proper documents are presented and procedures followed and to collect registration fees. At the same time, the Central Registration Office exists with functions of monitoring the financial operations of each Registration Office, providing technical assistance and training to Registration Offices, receiving complaints about improper behavior of Registrars and acting on these complaints, providing needed budget support, and archiving kartela and map information.

-- Relations between public and private sectors

In 1993 there were no private land surveyors, no notaries, only one informatics consulting firm, no private capabilities for map production. Moreover, there were no rules for governing the contracting of private firms in the many activities of surveying, mapping, information management which comprise the registration component of the project.

After two years, the project has been able to contract with private land surveyors for all field parcel map updating, for all data entry of kartela information, for the digitization and printing of maps, and for information systems design.

Procedures have been implemented for the incorporation of project imported equipment into contracts with private agencies for field surveying and digitizing.

-- Access to Property Information

The kartela and map information is open for view by the general public upon demand and at no cost, if the request concerns a specific property. There is a single restriction presently on the kartela data base, besides limiting modifications to authorized users, that a request to list all properties of a particular person would not be honored, unless ordered by a court.

As yet the costing of information takes the line that only costs of reproduction will be charged, although this principle is not well entrenched.

Standards for the storage and exchange of information have been developed within the project only, without coordination with other agencies. This serious lack is to be addressed in the near future.

-- Training and Public Information

Training programs are being implemented to prepare the staff of the Registration Offices to assure the validity of the information therein registered.

In order to improve the probability of accurate and precise registration of rights, training is provided to the Notaries who prepare documents for registration, including the provision of standard forms for different types of transactions and instruction in their preparation.

For facilitating transactions, support is being given to the formation of an association of real estate agencies, which is developing a program for improvement of the operation of such agencies as well as for the provision of information for the assessment of market values of real estate.

-- Remaining Problems of Title

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

An example is the situation of title for agricultural land, whose privatization was implemented under Law 7501 of 19 July, 1991. The program for the registration of these rights cannot proceed without their clear granting by the state.

During the updating and registration process on one hand, and through studies on land policies on the other hand, the PMU/IPRS has documented that in many cases, during the land reform process, some phenomena have come out, which are in opposition to the legal norms on which this reform is based.

Some of the main problems are:

- In many districts and cadastral zones the documentation of land privatization is lacking, and in some cases, not only the act of getting the land in ownership - the tapi or property title has not been issued.
- In many cadastral zones, the initial distribution of the land was done according to the law, but later the farmers decided to re-occupy their ex-properties, and this has brought about not only obstacles for the registration project, but also conflicts among the farmers.
- The problem of Cadastral Zone boundaries

In order to have a comprehensive system for the registration of rights to private and publicly owned properties, the entire area of the country must be brought into the IPRS. Priority has been given to the registration of private ownership and use rights in the agricultural areas of the approximately 2900 villages. The registration field teams are also recording state owned roads, canals, non-privatized agricultural parcels ("refused" land) as well as public buildings such as schools and clinics in the agricultural areas. These "agricultural area" land parcels are locally known to be within the boundaries of a village, which for registration purposes has been called a cadastral zone.

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

- The problem of "state" ownership of real estate

The non-privatized land and buildings remains as state owned (except for houses which were continuously occupied by their owners prior to 1991, and not formally expropriated). However, there has been no further precision of what agency of the state has the management responsibility over these "state" properties, nor what the procedures will be for transferring their management to units of local government which are most capable of effective use and maintenance.

A legal framework for defining this public ownership is needed (a draft law has been prepared by the PMU/IPRS), as well as actions taken for the adequate

description of the boundaries of such properties and for actually assigning their administration to specific agencies.

-- The problem of land degradation

There are three general types of land degradation problems which have emerged in Albania²⁹:

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

2. Contamination of Surface and Ground Water. There are three major types of contamination:

a) Inappropriate municipal solid waste disposal.

The location of municipal solid waste facilities in rural areas will reduce the amount of agricultural land available for crop production and if not properly located taking soil types into consideration will pollute groundwater.

b) Contamination of surface and ground water.

Sediment from soil erosion, along with fertilizers and pesticides carried with soil particles, contaminates surface and ground water and reduces its quality for irrigation, industrial, livestock, human, fishing, recreational and livestock purposes.

c) Contamination of land from industrial and agricultural sources.

Factory and mining wastes often flow onto the surrounding land and produce contamination of the soil. The pumping of wells along the Adriatic coast can produce the filtration of salt water into the aquifers which then is pumped onto the soil, producing problems of salinity.

3. Unguided urbanization on high-quality agricultural land

Unguided urbanization on high quality agricultural land is also a threat to valued land resources. The construction of homes outside the “yellow line” of cities, where over one-third of prime agricultural land is located, and village boundaries without permission is increasing, thus reducing the availability of highly

productive land and affecting the ability to provide sufficient food for the country.

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

5. Summary and Conclusion

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

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

Finally, the paper discusses some of the institutional problems of land administration in Albania: (1) Intergovernmental coordination of land administration; (2) investments in the geographical information infrastructure; (3) the balance between centralized and decentralized land administration; (4) relations between public and private sectors; (5) access to property information; (6) training and public information; (7) the lingering constraints on creating private and public ownership rights to land; and (8) the problems of land degradation.

The paper deals only tangentially with the land administration implications of the necessity for avoiding the triple dangers of the land privatization and land market, i.e., the fragmentation of land holdings, the polarization of society into the propertied and the propertyless, and the degradation of the natural resource base. These are topics for other analyses.

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

¹ The term "land" in this paper refers to a piece of the surface of the earth, and any permanent structures attached to it. Mostly equivalent concepts include "immovable property" and "real estate". Graaskamp defines the later term as "artificially delineated space with a fourth dimension of time referenced to a fixed point on the face of the earth", (Stephen P. Jarchow, Graaskamp on Real Estate, Washington, D.C., ULI-Urban Land Institute, 1991, p. 42.

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

³ This definition is used in the United Nations Economic Commission for Europe, Land Administration Guidelines, New York and Geneva, 1996, p., 6.

⁴ Rights to privately owned land which the state may retain in western capitalist countries include: (1) the right to acquire private immovable property for public purposes; (2) the right to acquire ownership when the private owner dies and has no heirs; (3) the taxation of the owners of private property; (4) the right to forbid private owners to build on certain immovable property; (5) the right to deprive private owners of certain uses of the immovable property, such as the application of toxic pesticides or the creation of a rubbish dump; (6) the expropriation of private owners who do not use the property to satisfy legally defined social functions. The variability in the meaning of private ownership across cultures is discussed in F. Place and M. Roth 1992. Land Tenure Security and Agricultural Performance in Africa: Overview of Research Methodology. LTC Research Paper. Madison: Land Tenure Center, University of Wisconsin.

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

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

⁷ St. John de Crevecoeur, Letters from an American Farmer. New York: New American Library, 1963, p. 48. Cited in Michael Sherraden, 1991. Assets and the Poor: A New American Welfare Policy. Armand , New York: M.E. Sharpe, Inc.

⁸ See Stanfield, David and Agim Kukeli, 1995, "Consolidation of the Albanian Agricultural Land Reform through a Program for Creating an Immovable Property Registration System", Computers, Environment and Urban Systems, Vol 19, no. 2, 131-140, and Law 7501 (1991) and Law on Buying and Selling of Agricultural Land, Pastures, Forests (1995).

⁹ See report by author, "Study of the Romanian Land Market", mimeo, Terra Institute, 12 December, 1996.

¹⁰ Diana Kopeva, with Marvin Jackson and Keith Howe, "Land markets and the Role of Government During Economic Transition: An Appraisal with Reference to the Draft Land Lease Law", Ministry of Agriculture, PHARE Programme, Sofia Bulgaria, April, 1994.

¹¹ See Republican Center for Land and Agrarian Reform, Ministry of Agriculture and Food, Bishkek and the Land Tenure Center, University of Wisconsin-Madison, "Progress and Problems in Land and Agrarian Reform, mimeo paper, July 31, 1995; also paper by the author, "Land Administration for the Market Oriented Economy in Kazakhstan, Land Tenure Center and Terra Institute, November, 1993; and Kathryn Rasmussen, Land Rights in the Kyrgyz Republic and their Registration under the Pilot Immovable Property Registration Project, Washington D.C.: ICMA, May, 1996.

¹² See papers by the author on Dagestan and Kazakhstan, op.cit.

¹³ Bojnec, Stefan, 1995. "Structural Reforms and the Agricultural Sector in Central and East European Countries", Third Ministerial Consultation on Agricultural Policy and Reforms in Central and Eastern Europe, Prague, 13-14 November.

¹⁴ The case of Kyrgyzstan is instructive in this regard. Until the approval of the new land code, the right of transfer rights over physical pieces of agricultural land was at best unclear. With the approval of this new code, such rights are expressly validated. See Kathryn Rasmussen, 1996, op.cit. Of course the Russian case is also instructive, but the recent decisions to allow transfers have been issued from the Office of the President, and are not debated nor approved by the Parliament.

¹⁵ See Peter F. Dale and John D. McLaughlin, Land Information Management, Oxford University Press, 1989, Chapters 2 and 9; Gerhard Larsson, Land Registration and Cadastral Systems. New York: John Wiley and Sons, Inc., 1991, pp.11-12, and Chapter 6 for the benefits of cadastral and land registration systems.

¹⁶ There is a large literature which make these arguments, summarized by Michael Carter, Gershon Feder and Michael Roth, "Land Tenure and Agricultural Performance: Reflection on Global Experience" in Transition of China's Rural Land System: Papers from International Symposium on Rural Land Issues in China, Madison, Wisconsin, Land Tenure Center Paper 151, 1995.

¹⁷ See Sherif Lushaj, "Land Fragmentation and Consolidation in Albania", Land Research Institute, Tirana, mimeo, 1995.

¹⁸ For a description of the environmental problems of Albania, see "Environmental Status Report, 1993-1994", prepared by the Committee of Environmental Protection, Ministry of Health and Environmental Protection, Tirana. For the environmental situation in Former Soviet Union Countries see Bo Libert, "FSU-Environmental Heritage", International Publishers: London, 1996.

¹⁹ See Roman Frydman and Andrezej Rapaczynski, 1994. Privatization in Eastern Europe: Is the State Withering Away?, London: Central European University Press.

²⁰ See Gregory Gleason, 1993. "Central Asia: Land Reform and the Ethnic Factor", RRFI/RL Research Report, Vol. 2, No. 3, 15 January, pp. 28-33. Also Stanfield (1996) report on Dagestan, op.cit.

²¹ See Michael R. Carter and Dina Mesbah, "Can Land Market Reform Mitigate the Exclusionary Aspects of Rapid Agro-Export Growth?", World Development, Vol 21, No. 7, pp. 1085-1100, 1993 for arguments about how capital markets discriminate against the resource poor in capitalist economies, with special reference to Latin America.

²² See paper by the author, "Land and Ethnicity in the Republic of Dagestan", Land Tenure Center, 6 May, 1996 which describes these sentiments in Dagestan as influential in the public referendum disapproval of the introduction of land markets. See also Frydman and Rapaczynski's (1994) discussion of financial reforms in Eastern Europe.

²³ To the degree that interests in land are registered, and to the degree that the law and courts are able to define and protect these interests, we can say that there is a degree of formal security with which people hold these rights. If the formally registered rights are successful against all other claims to the registered properties, then the holders of registered rights are likely to believe that they are secure in their rights (subjective security). If, however, there are competing claims, such as those of ex-owners which in practice are strong (See Harry Lemel, "Tenure Security", mimeo report for the PMU/IPRS, 1996), either because of the weakness of the legal system or because of the strength of local customs (see Shtjefen Gjocov, The Code of Lek Dukagjini, Gjonlekaj Publishing Company: New York, 1989) or some combination of these factors, there may be formal security but not subjective security of tenure. Without subjective security, it makes little difference what claims are made about formal security.

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

--the relative frequency of transactions of properties (the dynamism of the immovable property markets), since buyers can positively identify the owners of property who have the right to sell;

--the relative market value of properties, since clear definitions of who owns properties which are marketable attract investors, i.e., increases the demand for such properties;

--the relative frequency of mortgaging of properties, since banks want to be sure of being able to foreclose on identified owners of legally registered properties who have agreed to place such properties as collateral for loans;

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

²⁴ For the "dead end road" interpretation of the past 50 years, see Christian Giordano, "Not All Roads Lead to Rome", in Eastern European Countryside, Promotion Issue, Torun, Poland, Nicolaus Copernicus University, Department of Sociology, 1993. For a description of the Central European model of Registration--Cadaster, see Peter Böse, "The Guarantees Provided by Registration and the Principle of Publicity", 1995 Paper presented to Seminar on the Registration of Immovable Property, June, 1995, Tirana, Albania.

²⁵ See the United Nations Economic Commission for Europe, Land Administration Guidelines: With Special Reference to Countries in Transition, New York and Geneva, 1996 for a discussion of this problem.

²⁶ See D. Stanfield paper, "Study of the Romanian Land Market", Mimeo, Mt. Horeb Wisconsin: Terra Institute, 1995 for a review of the policy debates about registration and land markets in Romania as of mid 1995.

²⁷ See Mohamed A. Mohamed's paper on "Development and Implementaiton of a Real Estate Information System for Nizhny Novogorod, Russian Federation", LTC mimeo, August 30, 1995, for a description of the systems design difficulties of a project in Russia.

²⁸ The GI2000 Discussion Document, "Towards a European Geographic Information Framework", European Umbrella Organisation for Geographic Information (EUROGI), Brussles, 31 December, 1995.

²⁹ This section is based on the conceptual work done by James Bockheim to develop the Land Protection Action Plan. See J. Bockheim, "Preparation of an Action Plan for the Protection of Land in Albania", Terra Institute, mimeo, April, 1995