

# **THE CREATION OF AN IMMOVABLE PROPERTY REGISTRATION SYSTEM IN ALBANIA**

by

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# THE CREATION OF AN 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>1</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>1</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 deeds versus title organization of the recorded property information was investigated in substantial detail by a Working Group assigned the task of designing the new immovable property registration system (IPRS). Internationally, the trends in the post WWII period and particularly with the advent of computers and cheaper and more precise parcel mapping, had been leading to property based, map supported property rights registration systems, and the unification of cadasters and registries. Consulting with other experiences, the Albanian design team encountered various evaluations of the “deeds” versus “property based” registration systems in different contexts during the recent past. In the case of new African countries, 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>2</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>3</sup>”

There is a passionate literature concerning 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

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<sup>2</sup> United Nations Centre for Human Settlements (Habitat), *op.cit.*, p. 4

<sup>3</sup> Ontario Law Reform Commission. Report on land registration, Toronto Department of Justice, 1971, p. 23.

arguments can be found in C.Dent Bostick, "Land Title Registration: An English Solution to an 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>4</sup>.

In 1993 and 1994, key members of the Albanian working group for the design of the IPRS 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 IPRS of Austria in general and the property mapping techniques in particular in Central Europe. The head of BEV<sup>5</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.

Pertaining to title versus deeds registration, it was felt that 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.

These considerations strengthened the resolve of the Working Group and the various Ministers involved in the design of the IPRS 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.

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 IPRS 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,

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<sup>4</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>5</sup> Dipl.-Ing. Friedrich Hrbek was the Head (Präsident) of BEV at that time.

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 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 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>6</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 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 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>7</sup>.

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<sup>6</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.

<sup>7</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.

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>8</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 IPRS**

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

- 1) sporadic registration. Under this approach the new IPRS 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 IPRS 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 IPRS, 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 IPRS, 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 independent entity, had the power 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 to 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

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<sup>8</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

had an “agricultural” identity from the beginning. 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 IPRS and to establish the legal, policy and institutional framework for a properly functioning real estate market, and “roll out” a functioning IPRS, rather than establish an Albanian PMU and through that PMU help build up a functioning IPRS? 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.

After a lively discussion within the University where some faculty expressed strong opposition to getting the University involved in project implementation, it was 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 would provide 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 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>9</sup> located people to staff the PMU who were intelligent, committed, creative and willing to learn. This team held together for seven years and accomplished the initial registration of over two million privately and publicly owned properties, and the opening of 34 Registration 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 IPRS has been widely consulted and used for developing similar concepts in Georgia, Moldova, Kyrgyzstan, Belarus and other transition countries.

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<sup>9</sup> The General Manager was Ahmet Jazoj, Hysen Halili was the Minister and Llazar Korra was the Vice Minister who were largely responsible for putting together the PMU team and financing for what was accomplished.

## 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 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>10</sup> Incorporating these properties into the IPRS 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 IPRS model.

**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>

<sup>10</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.

<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
Subtotal Peri-Urban Prop.	213,400
<b>Total Properties</b>	<b>3,997,626</b>

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

### 3. THE IMMOVABLE PROPERTY REGISTRATION SYSTEM: CORE CONCEPTS

The IPRS 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 Immovable Property Registration Act 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 Registration system 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 with opens the door for the creation of a Geographical Information System that could be of significance for the future development of Albania.

#### 3.1 CONCEPTS

Central concepts used in the construction of the IPRS in Albania<sup>11</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 a Immovable Property Registration Office. A zone may be smaller than a District such as in the case of Tirana, 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 Office.

**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.

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<sup>11</sup> See Lida Stamo and Norman Singer, 1997. "Albanian Immovable Property Registration System: Review of Legislation", Land Tenure Center, Working Paper No. 7.

**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 IPRS

In the creation of the Albanian IPRS, 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 Offices should be a reflection of what really exists. To achieve this goal, 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 IPRS, he/she can be compensated by the State.
4. “accessibility<sup>12</sup>” principle, that is, the costs of access to the Registration Offices should be minimized so that any person regardless of their wealth or location, can have easy access to the registration system. The Registration 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 Office, thereby minimizing legal, notary, and surveying fees.

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<sup>12</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 IPRS, 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 IPRS.

- 5 “comprehensive” principle, that is, all immovable property, privately and publicly owned, urban and rural is contained in the IPRS. 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 IPRS in Albania**

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

#### **Independent Local Registrars**

The operational office in the Albanian IPRS is the District Registration Office where a Registrar and staff have the authority to do first registrations of properties not already in the IPRS and to register all valid transactions on properties which already have a kartela and index map 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 IPRS 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 has an office and staff in Tirana, and has the authority to nominate Registrars and provide training to them and their staff, and to periodically evaluate their procedures and to issue instructions about the proper functioning of Registration Office. To those people most capable to be Registrars the Chief Registrar has the authority to test applicants about their knowledge of the IPRS and relevant property law and mapping procedures which Registrars need to understand and appreciate for the proper functioning of Registration 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 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 Offices highly professional and efficient has not always been born out in practice.

#### **Independent IPRS**

The Chief Registrar reported 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 Offices’ information systems. The reason for this

arrangement was to avoid sectoral conflicts which could arise if the IPRS 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 IPRS combined technical mapping activities with legal procedural techniques, locating the IPRS in the Ministry of Justice could result in inattention to the mapping component, while locating the IPRS in technical mapping agency could result in inattention to legal procedures. At some point in the future, the IPRS may become part of a line Ministry, or may move to an independent “executive agency” status.

### **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 Offices. To counterbalance this tendency, the designers of the IPRS 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 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 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 Office records. This approach in the early years of a new IPRS 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 Deeds Registry--Ipoteka**

While the focus has been on the new IPRS, 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 IPRS, 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 IPRS, 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 IPRS.

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 IPRS. Over time, the plan is for the Ipoteka based transactions to gradually decrease as properties are incorporated into the parcel based IPRS.

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

### **3.3 IPRS AS AN INFORMATION SYSTEM<sup>13</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 IPRS manages a combination of paper based information and digital information.

The IPRS in Albania is composed of Registration Offices in each District which record and display information about the rights that people and/or agencies hold in immovable properties. The IPRS (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 IPRS 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 IPRS 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).

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<sup>13</sup> See David Stanfield, 1997, “Immovable Property Registration Information System in Albania”, Land Tenure Center and Project Management Unit, Tirana, Albania.

Since the IPRS 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 IPRS 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.

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 IPRS and the procedures which the IPRS uses to make the information about rights to immovable property accessible. Figure 1 shows how the IPRS 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 Office, which has a specific geographical area as its jurisdiction. That means that the Registration 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;

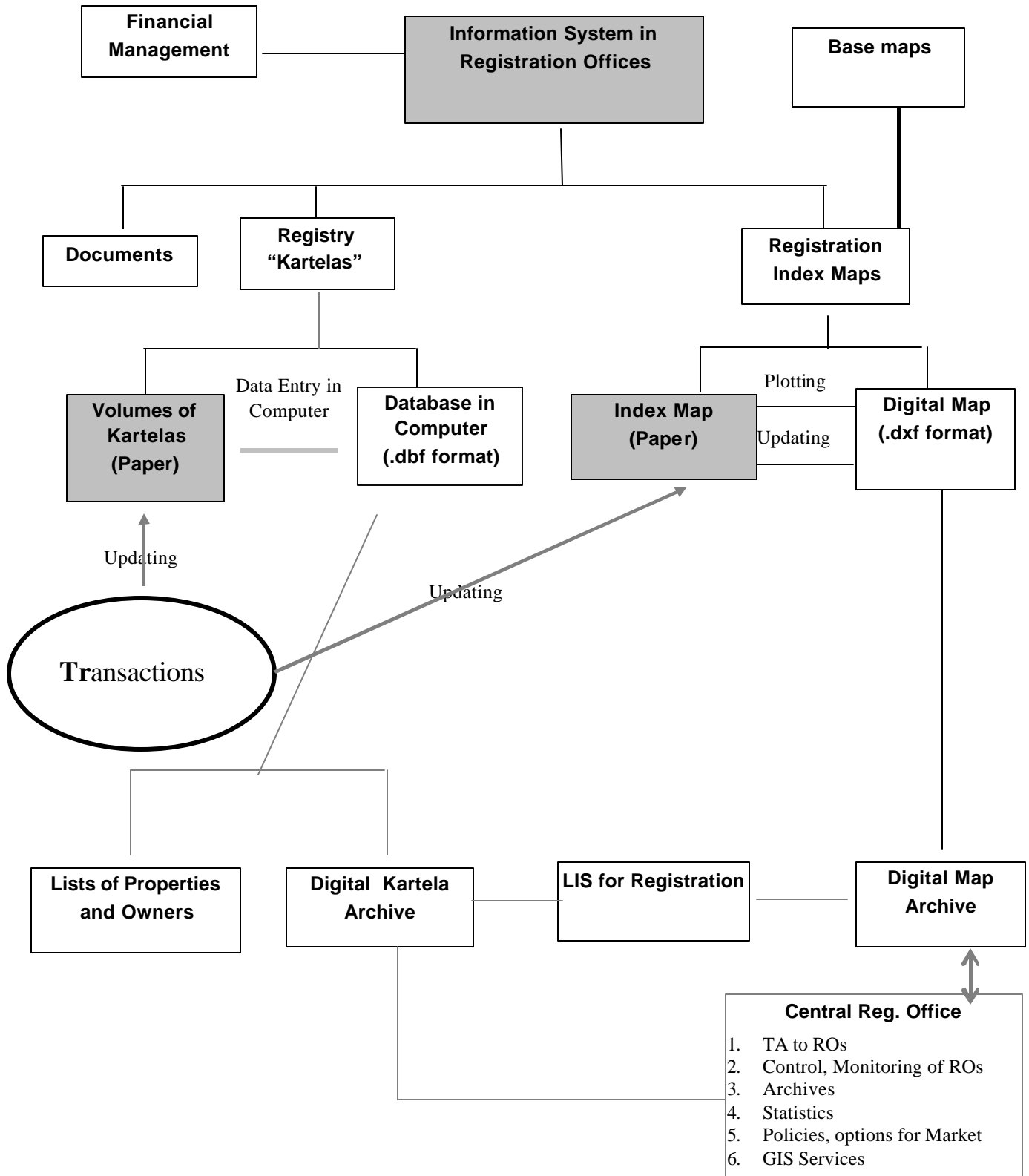
- The Index Map showing parcel boundaries for all parcels in a Cadastral Zone;

- 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 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 IPRS 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 IPRS: Parallel Paper Based and Digital Backup (initially)



### 3.4 COMPUTERS IN THE IPRS<sup>14</sup>

As set out in the design of digital information system, during the stage of creating new Registration Office, computers play an assisting role in the process of first registration and in the functioning of the IPRS. 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 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 IPRS 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 IPRS 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 IPRS;
- 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 office that are not familiar on how the system functions when they can see and read the records directly;

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<sup>14</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.

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

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

- Establish the new IPRS information on paper records which people can read and update with widely known and mastered technology;
- 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 IPRS offices;
- Define procedures for having a good archiving system in the Central Office of the IPRS;
- 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 IPRS.

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, which are based on standard exchange file formats, the IPRS 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 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 Office, which can facilitate title searches and which provide greater security than the physical archives. This idea has not been implemented.

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

Several transition countries in E. Europe and formed from former Soviet Union have adopted IPRS'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 IPRS. Evidence is accumulating from countries

which have adopted the parcel based, title registration approach, as to how things are working. All is not well.

#### **4.1 REGISTRATION OFFICE STAFF – UNTRAINED AND NOT PROFESSIONAL**

Due to low salaries and political pressures, the nomination of Registration 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 there is little training and appointments owe more to political and personal contacts than to knowledge and capacities. Of course there are important exceptions to this trend, 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 quality and professionalism of staff throughout the IPRS.

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

The monopoly power by the Registration 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 Offices, except that once such a system is installed in the normal operating procedures, those who pay the fees 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. Thirdly, the payment of such fees creates the image of the Registration 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 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 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 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 INITIAL REGISTRATION FEES AND DEGRADATION OF RECORDS**

For the creation of the IPRS, many countries have been able to launch projects to systematically bring properties (kartelas, maps, documents) into the Registration Offices in a national program of initial registration. These 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 all

properties in an instance, 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 initial registration of immovable properties. These procedures typically produce fees for the Registrars, facilitation or normal, and income for the IPRS and staff. A frequent reaction is for the Registration Office staff to state that the subsidized, systematic 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 initial 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 initial registration, which means that the IPRS will gradually devolve into a deeds registry without the advantages of a parcel based, title registration system.

#### **4.5 TECHNICAL DEGRADATION**

The systematic initial registration projects typically work with IT, while the operations of many Registration Offices are done manually with paper maps and paper kartelas. The procedures developed for updating and using the digital data bases produced by the 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 office in the future will be impossible without substantial additional investments. Today's investments by projects in IT are being lost. A particular danger is that the parcel index maps, the cadastral plans, are plotted onto paper at scales which are difficult to manage manually when there are subdivisions which result in parcels too small to see on the maps. Since the digital files are not being updated, new paper maps and more appropriate scales cannot be plotted.

#### **4.6 INFORMAL TRANSACTIONS**

People vote their opinions of governmental institutions by how much they interact with them. In the case of the IPRS, there appears to be a growing trend for people to conduct transactions outside of the Registration Offices, that is, informally. In economic terms, the transaction costs are too high—standing in line and being subject to rude staff, having to make several trips to the Registration Office, and paying of high facilitation fees. Also by conducting a formal registration 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 Offices. Since the notions of private ownership are new and not widely understood, and since the functions of the Registration Offices as protecting rights of private ownership are not widely believed, people are more inclined to engage in informal transactions than incur the costs of formality through interactions with an agency 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 legal framework and the administration of the IRPS.

The parcel based, title registration systems being introduced in Albania, as in other transition countries are in danger of degenerating. In countries where the IPRS appears to be developing

normally, it is more the result of strong leadership and strong public education and strong discipline by notaries. If such leadership weakens and people see a degradation developing, it will be hard even in these relatively successful countries (such as Kyrgyzstan) to avoid a downward viscous cycle which other countries are already witnessing.

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

For the IPRS to provide security to owners and to clients who use the IPRS information for transactions, it is normally the case that a mechanism exists for the compensation to users of the IPRS for damages that they suffer from errors in that information. Conditions in transition countries like Albania do not permit the creation and operation of such a mechanism. 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 this feature of the theoretical IPRS.

#### **4.8 DEGENERATION OF 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, and indicated that it would fund the PMU directly. However, after further investigations the concerns of the UW about the PMU management were confirmed, and funding by USAID in 2002 began to be channeled through a foreign company contracted by USAID, outside 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 make an institutional shift away from the PMU and develop an Albanian private sector management entity. USAID preferred not to battle deficient administrative procedures and the people who devised them within the PMU, and not find ways to improve the Albanian capacities for administering property rights. EU also abandoned the cause. Neither donors nor the Government supported the proposal to create a private, non-political Albanian management association which would be advised and supported by the foreign donors. The alternative USAID chose was to bring in a private, foreign company to conduct initial registration activities directly. Rather than being advisors to an Albanian administrative entity, the company directly contracted foreign experts, rented and equipped new offices in Tirana and began directly conducting initial registration activities. It is the case that this company contracted some Albanian staff and companies many of which had previously been contracted by the PMU, or which were formed by former PMU staff, so the accumulated capacities for first registration were not entirely lost.

The policy, legal and institutional development work of the PMU in support of a properly functioning market oriented economy, however, ceased to be carried out 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 entity, and the foreign donors have reverted to direct project funding through foreign companies. A type of paralysis has crept over the Action Plan idea, as people become concerned with maintaining status and employment rather than with satisfying the needs of the country for a properly functioning land administration system with the IPRS as its cornerstone.

## **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 IPRS and other land market institutions under the coordination of a well administered PMU has been destroyed. 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 which could be instructive in this regard, particularly from Georgia, if a decision was made to return to this road.

Some changes in the initial vision would have to be made, however. The implementing entity should be a privately chartered organization, whose board of directors would have the authority to name the senior management, and would include representatives of the legal, survey, planning, broker, banking, assessor, and registrar professions and property owners. Only priority areas where people, especially the Registrars and local government officials appreciate and actively the functions of first registration should systematic efforts be undertaken. Included in this “support” should be financial support 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 should be much strengthened, as well as the display and correction of the results of first registration.

### **5.2 IPRS**

The theory of the IPRS is quite attractive, but the reality of conditions and trends forces a re-thinking of what is being done to create such systems. Several ideas could be explored to modify the structure and procedures of the IPRS to salvage something of the investments already made:

- 1) Recognize that modern IPRS 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. 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 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 IPRS becomes more entrenched as a professional and respected institution. For example, require that title investigations be done to search for defects in title, back in time at least to 1990. Investors and potential buyers should investigate 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 Offices, which are done outside of the normal procedures and are of questionable legality.

2) Discourage informal, un-registered transactions

- Introduce “significant” immovable property tax to be paid by the registered owners (*inter alia*, to provide incentives for sellers to be sure that transactions are registered). Such a tax should be developed 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 the transaction tax, 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.

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

- Elect Registrars every two years, without party affiliation, to make them accountable to the local population, but without being subject to local political party pressures.
- Oblige the Registration Offices to become gradually self sufficient in terms of their operational and investment budgets, by finding ways to attract people to bring their transactions for registration. A first step is to make the Registration Offices “client” oriented, with the philosophy that such offices exist to serve their clients’ needs. Simply paying higher salaries to staff will not be sufficient. Moreover, particularly in a context where staff have become accustomed to charging “facilitation fees”, a strong program for instilling an “ethic” of a new profession of Registrars is needed, perhaps requiring of such people a satisfactory completion of a serious training program (e.g., in Turkey, to be a candidate for Registrar, a person has to be a graduate of a technical school specializing in that profession).
- A supervisory body should be created for overseeing each Registrar and the Chief Registrar in the IPRS, composed of people from government and the private sector who are interested in the proper functioning of the IPRS, such as bankers, notaries, construction company owners, brokers, valuers, local land use planners and surveyors. Such a supervisory body should have the ability to select the Chief Registrar. This 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 Office at any time, and to take disciplinary action against employees in cases of improper behavior.

4) Modify the legal and public expectations of the IPRS 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.

5) Public education about the IPRS should have a very high priority in any project or program to create the institutions of a properly function immovable property market.

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 IPRS will improve the probability that transactions will be conducted transparently and according to law. A modified IPRS will also increase the expectation that the evidence of ownership and other rights to immovable properties contained in the Registration 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.

A more radical approach may be needed if the degradation of the IPRS advances so far that it is difficult to envision how marginal reforms can succeed. One alternative which could be considered is to transfer the transaction registration functions to the lowest level of local government where officials are elected. 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 as yet there is no functioning property tax. However, the local government units can still be interested in maintaining accurate property records. Although there is no functioning land tax in the area, there is an infrastructure installation project underway 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 equally 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 this case.

Another option is to revert back to the old historical model of private registration offices, usually run by notaries who pass their archives of transaction documents to successor notaries, with qualification requirements and minor 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.

It seems clear that serious adjustments to the IPRS model or a more radical re-structuring of the registration function need to be explored for rescuing 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 IPRS 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 is a demonstration of how good 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 IPRS.