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THE WORLD BANK OFFICE, TIRANA

# STATUS OF LAND REFORM AND REAL PROPERTY MARKETS IN ALBANIA



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## **Acknowledgments**

This report's principal author was William Valletta, with contributions by Ejup Hamza, Mirvjena Laha and Kathrine Kelm. The report was prepared under the guidance of Nadir Mohammed and Julian Lampietti. Helpful comments were provided by Ibrahim Hackaj, Carine Clert, Toru Konishi, Gavin Adlington, Katelijn Van Den Berg, and Xiaofeng Shen. Lucy Hancock and Leigh Hammill contributed to the finalization of the document. The team received key support and hospitality from officials of the Government of Albania and from the Government's development partners.

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## Abbreviations and Acronyms

ADR	Alternative Dispute Resolution
AFADA	Albanian Federation of Agricultural Trade Associations
AFCR	Albanian Foundation for Conflict Resolution
ASP	Agricultural Services Project (World Bank)
CAS	Country Assistance Strategy
COHRE	Centre on Housing Rights and Evictions
DfID	(United Kingdom) Department for International Development
ECHR	European Court on Human Rights
EDEM	Enterprise Development and Export Market Services
EU CARDS	European Union Community Assistance for Reconstruction, Development and Stabilization
FAO	Food and Agriculture Organization
GIS	Geographic Information Systems
GIS/LIS	Geographic/Land Information Services
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit (German Agency for Technical Cooperation)
ICZMCP	Integrated Coastal Zone Management and Clean-up Project (World Bank)
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IPM-CRSP	Integrated Pest Management–Collaborative Research Support Program
IPRS	Immovable Property Registration System
MEDART	Albania Commercial Mediation and Arbitration Center
METAP	Mediterranean Environmental Technical Assistance Programme
NEAP	National Environmental Action Plan
NGO	Non-governmental organization
NOVIB	Netherlands Organization for International Development Co-operation
NSSED	National Strategy for Social and Economic Development
OSCE	Organization for Security and Co-operation in Europe
PADCO	Planning and Development Collaborative International
PMU	Project Management Unit
PSHM	Albanian Partnership in Micro-Credit
ROI	Registration Organizational Improvement (Project)
SEED	Southeast Europe Enterprise Development
SIDA	Swedish International Development Cooperation Agency
TAC	Territorial Adjustment Committee
TEG	Technical Expert Group
USAID	United States Agency for International Development
VAT	Value Added Tax

## Executive Summary

Since 1991, Albania has pursued a process of land and property reform that has encompassed the revival of civil law and market activities as well as the modernization of state administrative regulation and management of land. The main elements of civil law and market reform have included:

- the revival of civil law principles and institutes and their application to immovable property;
- authorization of market relations in land and immovable objects;
- transfer to citizens and juridical persons of rights in ownership of agricultural land, housing, and other commercial and industrial land and properties;
- restitution of property rights to families whose rights were confiscated after 1945, and compensation when restitution has not been possible; and
- creation of an Immoveable Property Registry System (IPRS) and other administrative mechanisms supporting civil law and market relations.

The main elements of state administrative reforms have included:

- organization of new units of administration to regulate and manage agricultural lands, forests and pastures, urban development lands and properties, and tourism-development lands and projects;
- division of state-owned lands and properties between direct state agency control and municipal ownership or right of use;
- incorporation of new concepts and procedures of environmental regulation and environmental impact assessment; and
- re-organization of related administrative systems, including local property taxation, mortgage and finance mechanisms and valuation.

Over the last 14 years, substantial progress has been made in carrying forward the civil law reforms and the programs of ownership transfer. Almost all families and some juridical persons have received documentation giving ownership rights in land and housing units, and most families and enterprises now occupy and use their land premises. Major problems remain. First, there are unresolved conflicting claims to land and properties made by former owners (pre-1945) and current occupants in some villages and urban neighborhoods. The former owners' claims will not be resolved until a fair method of compensation has been devised. Second, many illegal land subdivisions and construction projects have taken place, primarily on the periphery of cities and in tourism zones. These areas constitute a stock of citizen assets without legal protection and operating in the "informal" market. They often lack infrastructure and pose a health hazard. Third, the legal land and property holdings are highly fragmented, in both rural and urban areas. In order that land be managed efficiently, processes of consolidation should take place and a system of detailed agreements between owners must be worked out.

On the state side, progress in establishing the new administrative structure of regulation and management of land has been slow because of the need to bring new concepts and methodologies into the law and administrative practice. This has required re-training, re-organization and public outreach. It has also required transfers of power and resources. As would be expected, bureaucratic inertia, disagreements over methods and resistance by some organizational units have been obstacles and the resulting system—based on categorical definitions of land—has fragmented administrative jurisdiction and controls. The delays in creating effective administration and their complexity discourage citizens and juridical persons

from using the new systems and complying with the rules and standards. Many transactions and construction projects take place without permits, and there is widespread corruption.

The next stages of reform, therefore, will need to confront these problems of mismatch between the revised structures and laws, on paper, and functions and practice on the ground. The key elements of a modern European land and property system are now in place. The emphasis on reform activity, therefore, should shift toward the tasks of resolving the remaining policy issues, finishing the institutional systems, and creating routine procedures and standards at a detailed level. Key government initiatives that could benefit from the support of external stakeholders include these:

- implementation of the 2004 law, *On Restitution of Property Rights of Former Owners*, in particular working out a fair method of compensation for families that do not take back their ancestral lands;
- carrying forward the process of systematic first registration of private properties and state properties, to complete the registry system;
- the Ministry of Justice's reorganization of the IPRS, linking it more effectively with the courts, notary services and other related entities, to ensure its guarantee of rights based on the "chain of title";
- implementation of the 2004 law, *On Legalization and Urban Planning of Informal Zones* that provides the method of resolving illegal property rights in informal urban zones;
- ongoing work by municipal governments and the General Directorate of Forests and Pastures to transfer pastures and forests to communal control, with increased attention to the rights of citizen users;
- strengthening of the technical capabilities of agencies and non-governmental institutions and their working relationships through participation in multi-factor projects, such as coastal zone management planning.

## Introduction

In 1991, the Government of Albania initiated reform of land and immovable property relations by reviving principles of civil law, authorizing market transactions and initiating transfer of agricultural, housing and commercial properties into the ownership of citizens and juridical persons. Subsequently, the Government adopted other reforms intended to create modern systems of environmental protection, land use and management of state-owned lands. Despite this progress, the framework of legal principles and supporting juridical, administrative and institutional systems is not yet complete and the system does not yet operate as efficiently or transparently as required. The system's weaknesses appear to be the result of three factors. First, while there has been wide agreement on the goals of land and property reform, Albanians have not agreed on the best methods to achieve the goals, and therefore several fundamental policy decisions remain unresolved. Second, the reforms have been applied in a categorical manner—that is, with different legal definitions for agricultural, forest, pasture, urban housing, commercial, industrial and other lands and properties. This has created a highly complex system with many gaps and overlaps. Third, land parcels and property units have been fragmented, requiring each owner to engage in multiple subsidiary arrangements to accomplish routine property use. Taken together, these factors have made it difficult to adapt the models of European civil law and market relations within Albania. These factors have slowed the progress of reform and have left the system vulnerable to the growth of informal and corrupt practices.

This "stocktaking" report looks at the main elements of land and property reform, describing the current status of reform and factors that are obstacles to its completion. The report looks at still-open policy issues that must be resolved and considers aspects of environmental protection, land use control and management. The report concludes with recommendations for priority actions in the next stages of reform.

### Part 1. The status of land and immovable property rights in Albania

The programs of land tenure reform initiated by the laws of 1991-1994 anticipated a three-stage transformation from the former system of exclusive state control. (1) Land parcels and property units would be defined, physically and legally, and their ownership or subordinate rights transferred to private parties or divided between state and municipal agencies. (2) Each ownership and subordinate right would be registered. (3) Civil law and market transactions would then result. (See Appendix 1.) Progress in land tenure reform may be conveniently measured by the number by type of properties now found in each of the three stages.

#### 1.1 The current status of land tenure

Private ownership and subordinate rights of use and lease were to be created in the first stage of transformation, and were to be distinguished among four major categories of land use (and several others of smaller scale):

- Agricultural fields (arable land), previously controlled by collective and state farms, were to be divided into plots of equal size/value and distributed to the collective members and farm employees in family ownership.<sup>1</sup> A legal document called the "tapi" gives evidence of ownership in the name of the "head of household."

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<sup>1</sup> Law No. 7501 of 19 July 1991, *On Land*, and Law No. 8053 of 21 December 1995, *On Transferring Ownership of Agricultural Land without Compensation*.

- Housing properties, including apartments and houses with small land plots, were to come into the ownership of their occupants in two categories. (1) Units of former state and enterprise housing were to be transferred by means of purchase/sale documents, noting as owners the names of all adult family members.<sup>2</sup> (2) Small houses, recognized as "personal property" under Communist law, remain in the ownership of their occupant families supported by evidence given by any historic document of purchase or administrative transfer.
- Trade, industrial and service premises, buildings and land may be transferred in ownership (or a lease subordinate to state ownership) to juridical persons or entrepreneurs in the process of "privatization."<sup>3</sup>
- Families that were owners of land and property prior to 1945 have been able to claim restitution of their non-agricultural properties, or alternatively to receive other property or financial compensation.<sup>4</sup>

State and municipal ownership also is distinguished among several land use categories. In rural areas, these encompass forest, pasture and water-related lands.<sup>5</sup> In urban areas, they include streets and public places.<sup>6</sup> In addition, the state has retained some lands of former state farms, "refused" agricultural lands (lands that eligible families have rejected), and lands of discontinued industrial enterprises.<sup>7</sup> In cities, the state has retained the open lands surrounding apartment houses and other commercial and service buildings. The state is nominal owner of parcels on which claims of restitution have not been resolved, or other private parties have failed to take their ownership documents. In tourism development zones, the state has retained much of the land as pasture and forest. All state-owned properties are subject to inventory and a process of division in which municipal governments may acquire ownership or right of use.<sup>8</sup> In particular, commune administrations are acquiring control of forests and pastures, located close to the villages, for subordinate use by their residents. Local public facilities (schools, health clinics, streets, etc.) are being transferred to municipal ownership.

According to the law, private, state and municipal ownership were to encompass all land and immovable property. However, during the 1990's, disruptive economic, political and demographic changes took place during which control of land became confused, and many citizens subdivided and built on land without legal authorization. These actions resulted in "informal" urban districts on the periphery of cities, concentrated hotel and tourist service areas on the seacoast, scattered trade and service buildings on highways, and houses on agricultural fields outside the village centers. Such unauthorized land parcels and illegal buildings now constitute a large share of all immovable properties.

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<sup>2</sup> Law No. 7652 of 23 December 1992, *On State Housing Privatization*.

<sup>3</sup> Law No. 7512 of 10 August 1991, *On Sanctioning and Protecting Private Property*.

<sup>4</sup> Law No. 7698 of 15 April 1993, *On Restitution and Compensation of Properties to Former Owners*, revised by Law No. 9235 of 29 July 2004, *On Restitution and Compensation of Property*.

<sup>5</sup> Law No. 7622 of 13 October 1992, *On Forests and Forest Police*; Law No. 7917 of 13 April 1995, *On Pastures and Meadows*; Law No. 8093 of 21 March 1996, *On Water Resources*.

<sup>6</sup> Law No. 8743 of 22 February 2001, *On State Immovable Property*.

<sup>7</sup> Law No. 8047 of 14 December 1995, *On the Administration of Agricultural Land That Citizens Have Refused in Ownership*.

<sup>8</sup> Law No. 8743, Article 9 and Law No. 8744 of 22 February 2001, *On the Transfer of State Public Immovable Properties to Local Governments*.

Taken together, the reform programs creating private property rights, state property inventories and illegal actions have subdivided Albania into 4.5 million land parcels and separately-owned immovable property units. The main categories and the number of properties estimated in each category are shown in the following chart.

**Chart 1. Status of Land and Property Holdings by Category, 2005**

<b>Property Category</b>	<b>Estimated No. of Units</b>	<b>Comments</b>
Total Units of all Types	4,500,000	
<b>Rural properties</b>	3,300,000	579,000 hectares
-- Agricultural fields	1,900,000	568,000 hectares given to 420,000 households under law 7501
-- Village plots and houses	400,000	Owned prior to 1990 as "personal property"
-- State-owned forest, pasture and protected lands	1,000,000	Subject to inventory and division with communes
<b>Urban properties</b>	900,000	
-- Dwelling units (built before 1990)	237,700	Primarily apartments, sold to citizens under Law 7652
-- Individual houses (built before 1990)		Owned prior to 1990 as "personal property"
-- New legal dwelling units (1991-2004)	45,000	Built with permits
-- Non-housing premises		Privatized by law 7512
-- State/municipal	180,000	Subject to inventory
<b>Illegal properties</b>	90,000	In urban informal zones
<b>Property Claims by Former Owners</b>	42,000	30,000 claims decided; 12,000 claims pending

*Note:* The categorical estimates are drawn from different sources and do not add up to the estimated totals. See Appendix 1 for full source references.

*Source:* Authors' compilation

## **1.2 Status of immovable property registration**

In the first stage of transfer, citizens and juridical persons obtained title documents of ownership and subordinate rights. As noted above, in the second stage of reform, the law has required registration of properties in order to fix their status in civil law and make the properties eligible for future transactions.<sup>9</sup> To accomplish registration, the Council of Ministers in 1993 created the Immoveable Property Registration System (IPRS) and began the process of transferring legal documents into the new registry.<sup>10</sup> Prior to "first registration" of properties, state-held copies of title documents have been kept in other state archives: the rural "tapis" and village property documents have been in the land administration (cadastre) archives, while urban documents have been in the hypotek archives. (See Appendix 5.)

<sup>9</sup> *Civil Code of Albania* of 1994, Articles 192-197.

<sup>10</sup> Decision of the Council of Ministers No. 505 of 26 October 1993, *On Approval of the Action Plan of the Immoveable Property Registry System and the Programs Related to the Future Market of Immoveable Property*.

The IPRS is a budget-funded governmental unit, subordinate to the Council of Ministers until May 2005 and since then, in accordance with Law No. 9407, *On Changes and Additions to the Law on Registration of Immovable Property*, subordinate to the Ministry of Justice.<sup>11</sup> The IPRS has 36 district offices and a central office in Tirana.<sup>12</sup> Each district office maintains the title documents from a group of "cadastre zones," of which there are 3,058 in total—139 urban and 2,919 rural and mountain zones. (See Appendix 5.)

The IPRS uses a system of Registry Volumes and Pages (called "kartelas") to record the description of each property (size, boundaries and location) and its title information (ownership, subordinate rights, restrictions). All properties in a cadastre zone are entered into the registry in the first registration process, which consists of assembling all documents from the archives, conducting a field survey, clarifying the physical definition of each land parcel and separately owned immovable object accurate mapping, and cross referencing of the archive documents recording ownership and subordinate rights with documents held by citizens and juridical persons. The resulting information is written on the *kartela*, providing the baseline legal situation on the date of first registration. Subsequently, as transactions take place, the changes are noted on the *kartela*, thus creating the "chain of title." By referring to the *kartela* at any time, an accurate and guaranteed certification can be made about the status of the property, its ownership and subsidiary rights. However, only rights so registered can be given significance and protected by the courts. Failure to register a transaction renders it null, with no legal protection.<sup>13</sup> The structure and legal status of the IPRS accords with the typical model of a European registry system.

From 1994 to 2001, the Project Management Unit of the Ministry of Agriculture and Food carried out first registration in 2,263 rural cadastre zones and of apartment units (without mapping) in the urban zones. After a hiatus for re-adjustment of technical standards and contractual agreements, the process of first registration was undertaken in 2002-2004 with a focus on 62 "economic priority" rural zones (with tourism or industrial potential), 16 urban zones<sup>14</sup> and 58 rural zones. In 2005, work continued with a focus on four zones in the Korce District and selected priority economic zones. The progress of registration is shown in the following chart.

**Chart 2. Status of Land and Property Registration (January 1, 2005)**

Category	Number of Properties	Number of Zones	Partnerships Concerned
<b>Properties entered into IPRS by December 2004</b>			
Rural (2001)	2,013,000	2,263	USAID/EU/PMU
Apartments (2001)	168,000		USAID/EU/PMU
Rural economic priority (2004)	70,900	62	USAID
Urban (2004)	84,400	16	USAID
Apartment updates (2004)	12,000		USAID
<b>Zones in progress in 2005</b>			

<sup>11</sup> Law No. 9407 of 19 May 2005, *On Changes and Additions to Law No. 7843 of 13 July 1994 On the Registration of Immovable Properties*.

<sup>12</sup> The parliament has passed a law subordinating the IPRS to the Ministry of Justice. See discussion in text.

<sup>13</sup> These essential principles are found in Law No. 7843 of 13 July 1994, *On the Immovable Property Registry System*. See also the *Civil Code of Albania of 1994*, Article 193.

<sup>14</sup> The original USAID/EU project ended in 2001 after audits revealed significant problems in its organizational and financial structure and a high level of errors in the registry data.

Category	Number of Properties	Number of Zones	Partnerships Concerned
Rural zones (2004)	52,200	58	PMU
Korce/Maliq	15,000	4	EU
[to be chosen]		6	OSCE
<b>Remaining unfinished</b>			
Rural zones	400,000	531	
State-owned forest/pasture (not previously registered)	600,000	2,685	
Village centers (not previously registered)	10,000	40	
Urban	750,000	113	

Sources: IPRS, Ministry of Agriculture and Food PMU, ROI project (USAID)

### 1.3 The spatially fragmented outcome of land and property distribution and privatization

As first registration has proceeded to develop accurate maps and surveys, an extremely complex and fragmented pattern of rural and urban land holdings has been revealed. Certain elements of this pattern are unique to Albania and they constitute obstacles to the systems of civil law and market transactions. (See Appendix 6.) The problem of fragmented agricultural land has been studied and several projects have been undertaken by the Government to introduce methods for land consolidation and cooperative farm management.<sup>15</sup> The Ministry of Agriculture and Food encourages the consolidation of farm parcels by leasehold as a way to transform production from subsistence farming to market-oriented agro-business and strong family farms.<sup>16</sup> To date, efforts to encourage rural land consolidation on a "pilot" basis have not shown strong results and it appears that farm families are reluctant to engage in land exchanges or sales while land values remain uncertain.

In villages and cities, the problem of fragmentation has not yet been subject to study. Urban fragmentation arises from the standards of measurement applied in housing privatization and restitution. Land parcels accompanying individual houses are limited to 300 square meters. For apartment buildings, land parcels have been created directly underneath the buildings and extending one meter from the outer walls. In both types of case, the land surrounding the house or building is kept in state ownership, despite the fact that the occupants use these areas. Similarly, in many cases of restitution, a house or building and its underlying land are separated from the surrounding land, which is transferred to the former owner.

Land fragmentation hinders the application of civil law, functioning of markets and the practical use of land and property. Each owner must reach agreement with neighboring owners or gain administrative grants in order to carry out activities that would be internal management decisions in a typical EU country. In a rural setting, affected decisions can include crop rotation, pest control, fertilizer application and the movement of livestock. In an urban setting, they can involve parking, access from building to the street or location of children's play space. Almost any investment in development or re-development requires a consolidation of land, and the state or municipal government almost always becomes a partner because of its bits of land. The

<sup>15</sup> See World Bank (2002) *Agricultural Services Project (SEED) Appraisal Document*, No. 22161-AL at pp. 50-55. Also see Integrated Pest Management Collaborative Research Support Program, *In Depth Report of the IPM-CRSP Activities, 1993-2001*, Working Paper 00-1, March 2002.

<sup>16</sup> Albania Ministry of Agriculture and Food with GTZ, *Annual Reports* for 2002 and 2003.

Albanian system must handle an extraordinary volume of small, detailed agreements, few of which are “clean” civil law or market transactions.

#### 1.4 The status of civil law and market transactions

Based on the Land Market Action Plan of 1994, there has been an expectation that the number of civil law and market transactions would grow as land parcels and immovable objects are transferred and registered. To judge the extent to which this is happening in Albania, reference can be made to several sources of data. These seem to show that the majority of transactions do not make use of civil law and market mechanisms; rather, customary, informal and non-transparent relationships are predominant.

The IPRS is the primary source of data on legal transactions. (See Appendix 7.) A property owner who seeks to enter a transaction first should go to the IPRS to obtain the Certificate of Ownership. The Certificate is presented to the notary or mediator and to the other party as substantiation of the owner's status. (A non-owning party may also request verification from the IPRS.) Subsequently, the new agreement must be brought to the IPRS for registration. Thus, the applications made at IPRS offices for certificates, verifications and input of new transactions indicate the number of properties that are legally purchased/sold, leased, inherited and mortgaged each year. The annual statistics of the IPRS show the following:

- Requests for certificates have grown, from 83,000 in 2000 to over 130,000 in 2005, and verifications have held steady at about 35,000 each year. The growth is a positive sign, showing either that people recognize the value of the certificates to protect their rights, or that judges and notaries are requiring citizens to produce the documents. Yet the numbers remain low, considering that the annual number of Certificates represents about 4 percent of the 3 million units in the IPRS registry.<sup>17</sup>
- As for input requests, the numbers are extremely low, showing that few people are bringing to the registry any new documents recording purchase/sale, inheritance, lease or mortgage; a significant problem because the guarantee of legal rights in the registry rests on the unbroken "chain" of transfers.<sup>18</sup>

Several explanations have been given for the low use of the registry, including the poor quality service at the registry offices, the high level of notary fees and costs of preparing surveys and documents, and the fact that the registry office collects the property transfer tax. The issue is discussed further below. Whatever the reason, it is clear from other sources that numerous transactions are taking place, using forms other than civil law agreements and without registration. Some examples of these indicators are the following:

- The statistical records compiled by first registration in 16 urban zones in 2004, showed 14.0 percent of all properties marked as "restricted" and 20.4 percent in the category of "illegal buildings." The "restricted" designation means that the documentation of land ownership is flawed or missing. It seems likely that a large number of the restricted properties as well as all of the illegal buildings have

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<sup>17</sup> Since the Certificates also are used for court and administrative proceedings, the number of Certificates issued does not indicate the number issued for transactions only. A comparison of the Albania numbers with those of the Baltic States is contained in Appendix 2.

<sup>18</sup> This problem of the deterioration in the "chain" of property records has been confirmed in the process of urban first registration in 2004. It was necessary to "update" hundreds of *kartelas* for previously-registered apartments, because no one registered changes in ownership in the intervening years.

involved one or more transactions outside the system. Data from the rural districts also shows a high proportion of "illegal buildings" and restricted properties among the whole. (See Appendix 7.)

- The *kartelas* compiled in urban and rural districts in first registration in 2004 show almost no records of subordinate rights or obligations, such as leases, use rights, servitude agreements, etc. There is evidence that the use of leases is growing in rural districts but that these leases are short-term and are not registered.<sup>19</sup>
- The registry data shows that very small numbers of juridical persons are property owners. At the same time, the sites of large commercial, office and industrial buildings appear in state ownership or as un-consolidated small parcels, owned by separate individuals. These observations signify that the transactions that have taken place to consolidate the building sites and link the rights of building developers to landowners have been undertaken outside the civil property law.<sup>20</sup>
- Studies of the informal zones on the periphery of cities have described the customary rules that substitute for civil law and market transactions. Typically, a land parcel designated for agriculture is subdivided without documentation. The action is followed by a series of documents recording gifts, exchanges or purchase/sales, intended to create a "chain" that insulates a current occupant from the original illegality.<sup>21</sup>

The size of the informal market can be measured only indirectly against that of the legal market. For example, there is a gross disparity between the number of housing units actually built and the official records of construction permits. The official statistics to 2003 show 14,256 new residential buildings with an average of 268 sq. meters per building, or a rough total of 40,000 dwelling units.<sup>22</sup> Yet the Population and Housing Census of 2001 found 120,000 residential units built after 1992.<sup>23</sup>

## 1.5 The status of inventory and transfer of state properties

The process of determining state-owned land and property holdings and their division between state agencies and municipalities has been under way only since 2001, and is being completed less rapidly than expected. This process has been managed by the State Agency for Transfer of Public Property, which sets the standards and oversees the work of the communes and municipal administrations.<sup>24</sup> The process involves an initial stage in which the commune or city administration must inventory the state land and immovable objects within its territory and designate those for which it seeks transfer. The list then circulates among the state agencies. When an agreement is reached, it is adopted by the Council of Ministers in a preliminary form and put on public display for 90 days. After display and any corrections, the Council of Ministers gives final approval of the transfers to the municipality and the assignment of properties to state agencies. The final stage is registration in the IPRS. (See Appendix 8.)

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<sup>19</sup> The Ministry of Agriculture and Food with GTZ, the *Annual Report for 2002*, pg. 58, gives a figure of over 10,000 for such leases.

<sup>20</sup> The practical contracts used by developers are described in "Te blesh shtepi ne Tirane" ("Are you buying an apartment in Tirana?") in the business journal *Monitor*, No. 84, 13 August 2003, at pp. 8-11.

<sup>21</sup> See Haxhi Aliko and Romeo Sherko (1999), *On Regularization of Informal Settlements in Albania*, report for the Project Management Unit of the Ministry of Agriculture and University of Wisconsin.

<sup>22</sup> Albanian Institute of Statistics, *Objects of Construction by Kind of Activity*, [www.instat.gov.al](http://www.instat.gov.al).

<sup>23</sup> Several estimates are cited in the UN ECE (2002) *Country Profile of the Housing Sector: Albania*, <http://www.unece.org>.

<sup>24</sup> The State Agency is a subdivision of the Ministry of Local Government.

By April 2005 (when this study was being drafted) work was underway in 353 communes and cities and 64 had achieved preliminary approval of their property lists. In eight of these, the work had been carried out through the stage of division of properties, and they were ready for public display. One municipality, the small city of Kucove, had completed all stages and in November 2004 had obtained a Council of Ministers decree transferring 536 land and property objects. The city had applied to the district IPRS and received verification of registration of two properties (including its city hall).<sup>25</sup>

A substantial flaw has emerged in the inventory process: a cooperative agreement for sharing data has not been reached between the IPRS and local governments. Therefore, the communes and municipal administrations are not taking data on state-owned properties from the registry maps and *kartelas*. Instead, they are assembling the data from other ministries, and are creating new maps and GIS systems. That is, the communes, municipalities and the State Agency for Transfer are recreating data that already exists and is fixed by law.<sup>26</sup> There will be discrepancies between these data banks, and it will not be possible to register many of the properties after their transfer without another process to reconcile their descriptions. If, in cases of discrepancy, the state and municipalities assert a predominance of their boundary lines and state ownership rights over IPRS registry data where they overlap with private properties this will undermine the status of the IPRS and the civil law.

## 1.6 The status of rights in forest and pasture land

Transfer of state-owned lands to local control concerns forest and pasture. These categories are separately defined and each is subdivided into four categories of tenure. (i) Small areas of pasture or forest may transfer into private ownership by restitution.<sup>27</sup> Forests and pastures located close to villages remain in state ownership but transfer by right of use to the commune administrations; the communes, in turn, make the forest and pasture areas available for subordinate use by local residents. (iii) Forests and pastures in remote locations remain in state ownership with use rights granted directly by state agencies to timber-cutting enterprises and to recreation and tourist facilities. (iv) Finally, forests and pastures in areas of special protection may be included in the national parks, reserves and other zones with unique management regimes.<sup>28</sup> (See Appendix 8.)

The General Directorate of Forests and Pastures under the Ministry of Agriculture and Food has broad jurisdiction over these lands. It is organized as a Directorate of Forests and Pastures with 36 district sections and 130 local offices, a Directorate of Communal Forests and Pastures and Extension Services that assists the communes in forming leases and use agreements for local citizens (organized in association with natural resources management) and in working out improvement plans for reforestation, pasture seeding, etc., and Forest Service Police who carry out inspections and enforce the laws and compliance with conditions of use. A separate Directorate of Protected Areas has jurisdiction over parks, reserves and other protected zones.

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<sup>25</sup> The fate of the rest of the properties is unclear, however, and the new district registrar said in April 2005 that he was unaware of the city application pending in his office.

<sup>26</sup> The IPRS maps and registry data contain the boundary lines (based on surveys) and property ownership identifications. In the zones completed in 2004 (62 rural, 16 urban) all state properties are mapped and surveyed; in earlier zones, state-owned agricultural and village properties (excluding pastures and forests) have been completed.

<sup>27</sup> Estimated at 10 percent of all forests and pastures. See Ministry of Agriculture and Food, *Annual Report for 2002*, at pg. 86.

<sup>28</sup> Decision of the Council of Ministers No. 532 of 5 October 2000, *On Approval of the Strategy of Biodiversity*.

The Government has made considerable progress in the transfer of communal forest and pastures to communes (with co-financing by the World Bank and USAID). It is reported that 140 communes now control 391,000 hectares, nearing the eventual goal of 400,000 hectares of forest (40 percent) and 244,000 hectares (60 percent) of pasture in communal control. The process of transfer involves several stages. The size and boundary lines of the areas assigned to each commune and subordinate village are worked out and 10-year use agreements signed. The Forest Directorate staff prepare a management plan with communal participation. At the village level, the citizens are organized into a users' association that takes subordinate rights to use areas for grazing, harvesting of firewood and herbal plants, and other activities. (The Forestry Project of the Government of Albania spent US\$3.72 million for small investments in 126 communes to restore selected forests and pasture areas.) In a recent evaluation of the outcome of this process of transfer, the researcher has noted several issues. First, 10-year use rights may be too short to give the communes effective control. Their powers in relation to the Forest Directorate are vaguely defined. Second, the subordinate rights of the users' associations are limited and not documented. Third, the rights of the families within the users' associations are not clarified and, in most cases, family rights are not linked to subdivided areas of the forest or pasture. Fourth, many customary aspects of forest and pasture activity formerly controlled by village elders are not respected in the management plans and user agreements. Finally, limitations on the right of citizens and their users' associations to organize as profit-making businesses appear to limit the sustainability of the enterprises.<sup>29</sup> (The Natural Resources Development Project of the World Bank aims to expand the transfer of forest and pasture areas to 80 communes and to strengthen the legal and planning instruments for citizen use.<sup>30</sup>)

## **1.7 Land and property disputes**

Although a source providing precise and recent statistics could not be identified, there is general agreement that about half of all cases in the civil courts involve land and property disputes.<sup>31</sup> Professionals in the system complain about delays, procedural complexity, the inexperience of judges and court staffs, and limited resources to obtain technical expertise. Judicial orders and judgments are not often registered as the law requires, and there are problems with execution of court orders. (See Appendix 10.)

There have been two approaches to address these issues. The Government has undertaken several projects working with judges, lawyers and administrators to improve the operation of the civil courts and upgrade the quality of their substantive decisions. These projects provide training for judges and staff, improved case management and streamlined procedures for bailiffs and related services. These projects do not have a specific focus on land and property cases. The School of Magistrates has conducted judicial training on land and property issues (with EU and USAID support) but the Faculty of Law at Tirana University does not offer comprehensive courses in land or property law.

Some externally-funded projects have worked with local non-governmental organizations to organize mediation services as an alternative to the courts. This activity has led to the adoption

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<sup>29</sup> See Harold Lemel (2005), *Compilation of Reports, Findings and Proposals on Land Tenure and Organizational Issues*, Natural Resources Development Project of the World Bank.

<sup>30</sup> World Bank (2005), Preparation of a Natural Resources Development Project, under TF 053121.

<sup>31</sup> See Norman Singer, (2001), Consultant's Report: *Survey of the Civil Court Caseload for USAID*, July 4-29, 2001.

of a law allowing parties to submit their disputes to mediators.<sup>32</sup> However, a formal system of mediation is not in place and recent consultant reports have noted problems in the law. In particular, the law does not authorize judges to transfer cases from the courts to mediation. On an informal level, there is evidence that village elders, municipal officers and other local leaders are called upon frequently to mediate disputes among family members and neighbors. Donors have supported the Albanian Foundation for Conflict Resolution and have assisted other local activities by providing training and the services of social workers, religious leaders and other professionals.<sup>33</sup>

## Part 2. Unresolved policy issues

As noted above, several reform programs have made substantial progress, but no program is completed and unresolved policy issues remain. These encompass several fundamental questions: restitution/compensation, informal settlements and the status and function of the IPRS. They also involve technical and systemic questions of taxation, mortgage and finance, valuation and the problems of the coastal tourism zones. Resolution of the policy issues is taking place within the broad policy framework that the Government of Albania has been developing in recent years. The National Strategy for Social and Economic Development (NSSSED) is the main policy document of this framework, giving guidance to subordinate, sector plans and strategies and to the formulation of budgets.<sup>34</sup>

Reform of land and property has not been the subject of its own comprehensive policy document. However, the main elements of land reform –transition to civil law and market relations, modern management of state lands and properties, environmentally sustainable use of land resources are found in various parts of the inter-related policy documentation. For example, the "Green Strategy" for agricultural development and the poverty reduction strategies for rural and mountain lands emphasize the completion of land reform as a way to support citizen welfare and economic opportunities.<sup>35</sup> To take another example, the international commitments made by the government to combat corruption, improve management and simplify administrative procedures must affect the agencies that deal with land and property.<sup>36</sup>

### 2.1 Restitution of property rights to former owners

The unresolved issue of restitution/compensation has been the major obstacle preventing completion of tenure reform and first registration.<sup>37</sup> The debate over the restitution of agricultural land began in 1993 when the original Law No. 7698, *On Restitution of Property to Former Owners*, exempted this category. The law provided that former owners whose 7501 grant was not equal to their ancestral property rights could be compensated either by an alternative grant of land

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<sup>32</sup> Albanian Commercial ADR Centre Project (2004). Final report, Mediation/Arbitration project for PHARE.

<sup>33</sup> See Zhydi Dervishi (2004), *Zgjidha e konflikteve* ("Conflict resolution—One of the Humanizing Forms of Voluntary Activities") in *Paktimi* (Journal of the Albanian Foundation for Conflict resolution, Vol. 1, No. 21 at pp. 5-26).

<sup>34</sup> Ministry of Finance, *Priorities under the NSSSED, 2004-2006*, [www.minfin.gov.al](http://www.minfin.gov.al).

<sup>35</sup> See World Bank, *Albania: Sustaining Growth Beyond the Transition*, Report No. 29257-AL, 27 December 2004, at [www-wds.worldbank.org](http://www-wds.worldbank.org).

<sup>36</sup> See European Community, *CARDS Programme (2001), Country Strategy Paper 2002-2006*, on <http://Europa.eu>. Also see International Monetary Fund (2005), *Albania: Ex-Post Assessment of Longer Term Program Engagement*, [www.imf.org](http://www.imf.org).

<sup>37</sup> In summer 2004, the USAID-sponsored first-registration project suspended work in eight coastal zones where restitution disputes made it impossible to determine the status of the land.

or else by a financial entitlement. However, after the adoption of Law No. 7698, the form and value of this compensation was not agreed upon and the compensation program was not implemented. Dissatisfied former owners challenged the law on legal and constitutional grounds. In 1997-98, they had a prominent voice in the debate over the national Constitution and they succeeded in gaining a provision that required the government to draft and obtain approval of legislation resolving the restitution issues by November 2001. The deadline passed and it was not until July 2004 that the parliament acted.<sup>38</sup> (See Appendix 11.)

The revised law, *On Restitution and Compensation of Property*, addresses several problems of the 1993 version.<sup>39</sup> It maintains the primary principle, restitution or compensation of immovable property expropriated, nationalized, or confiscated after November 1944. It allows a wider range of claims and claimants than the earlier law but continues to exempt agricultural lands subject to Law No. 7501. The associations of former owners and other groups remain unsatisfied and have continued their legal and constitutional challenges.<sup>40</sup> In this contentious atmosphere, the government has been slow to implement the law. The twelve regional Committees on Restitution and Compensation that must adjudicate the claims began work only in April 2005 and have not (as of May 2005) received training, nor has staff for the State Committee that must set the procedures and standards and hear appeals been hired. An amendment to the law has been presented to Parliament to extend the deadlines by one year but discussions on this amendment have not yet been scheduled.

Among other issues of implementation, the valuation methodology for compensation is one that would benefit from comment in light of international experience. A committee of experts has prepared a draft methodology that must be approved by the parliament. This methodology results in land values that appear very high—up to Euro 700/m<sup>2</sup> in urban areas and Euro 30,000/ha for agricultural land. There is doubt that such a high level of compensation cost can be financed by the state over the 10-year period set by the law. Addressing this concern, the Government decided in May 2005 to submit its draft methodology to a review by independent experts.

Continuing delay in resolving the restitution and compensation issues causes a circular dilemma, hindering land and property rights in many regions. On one side, the number, location and boundaries of state properties cannot be specified until restitution parcels and private parcels (under Law No. 7501 and other laws) have been determined. On the other side, until state property is specified, it is impossible to specify which lands will be available for alternative grants to former owners. The lack of information about alternatives and values causes the former owners to resist making the choice between continuing their claims and accepting potential compensation.

## **2.2 Illegal development and informal settlements**

The problems of illegal development and informal settlements involve aspects of land tenure, land use and environmental regulation. In peri-urban areas, new large-scale residential settlements appeared in the early 1990s due to the massive internal migration that took place at

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<sup>38</sup> Pressure from domestic civil society groups and a high level of interest from international organizations influenced the parliamentary action.

<sup>39</sup> Law No. 9235 of 29 July 2004, *On Restitution and Compensation of Property*.

<sup>40</sup> In February 2005, the Constitutional Court heard a case challenging the law as a violation of the principle of equal protection. In April 2005, the Constitutional Court heard a counter-challenge brought by occupants of housing units who would be vacated when their buildings were restored to former owners.

that time. Typically, buildings were on public land with no legal title. However, the residents have paperwork from transactions in the early 1990s that took place as the central Government was overwhelmed by the speed of internal migration between 1991 and 1994. Construction has taken place without adequate water supply, sewers, access roads and other infrastructure, leading to serious environmental damage and health risks.<sup>41</sup> The issues of the informal settlements have been a high Government priority. Projects have been carried out in peri-urban neighborhoods in an effort to determine cost-effective ways to install infrastructure and "regularize" the urban functions of these zones. (See Appendix 12.)

There are in addition a number of buildings (mostly commercial) where the owners did obtain building permits from municipalities, but the permits do not accord with applicable laws. Examples include kiosks in public parks, shops on main irrigation canals, and houses or restaurants in protected areas. In the absence of urban regulatory plans and weak supervision by Government, local government authorities issued such permits at their discretion.

The major initiative by the government to address these problems has been adoption in October 2004 of a law, *On Legalization and Urban Planning of Informal Zones*,<sup>42</sup> setting the following goals:

- re-planning of each informal zone to ensure its proper functioning as an urban district, reserving the areas needed for infrastructure, street access and public spaces;
- bringing existing buildings into compliance with construction and land-use standards, and legalizing them under the administrative law; and
- settling the ownership or lease rights of the persons occupying the land and buildings.

The Law outlined a procedure at the start of which the citizen/occupants must file a declaration of their intent to legalize. By the deadline, 24 March 2005, 54,000 self-declaration applications had been filed asserting the location, size and boundaries of land parcels and buildings. There are varying estimates of the share of all parcels represented by this set of applications. By some estimates, these applications constitute 60 to 70 percent of an estimated 90,000 eligible properties; other estimates are that a relatively small number of all residents filed the self-declaration, following a systemic boycott of the self-registration process undertaken because the Law did not address the issue of "squatters' rights" nor consult with residents on the issue of the affordability of the market price to those living in the informal settlements. Moreover, some of those affected argue that their properties should not be classified as "illegal" since their claims rest on restitution or other laws. Interestingly, in one district of Korce, the applications exceed 100 percent because people outside the informal zone hope to be made a part of the program.

Professional teams have begun the technical tasks of reviewing the self-declaration forms and preparing the zone documentation and urban studies. A mixed outcome is expected because available data vary. In zones where there have been past projects, accurate surveys and other maps exist and the technical tasks should be accomplished within the short time periods set by the law.<sup>43</sup> In other zones, without registry maps and data, the task will be more difficult and the result less accurate.

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<sup>41</sup> See World Bank (2005) Resettlement Plan for Porto Romano Hotspot, Albania Coastal Zone Development and Clean Up, RP 319, available on [www-wds.worldbank.org](http://www-wds.worldbank.org).

<sup>42</sup> Law No. 9304 of 29 October 2004, *On Legalization and Urban Planning of Informal Zones*.

<sup>43</sup> For example, in the area of Kaneta in Durres, citizens have submitted over 1,000 applications, but these are being cross-checked against the registry maps and lists of owners compiled in first registration.

The success of the legalization and regularization program is likely to rest on the level of cost to occupants. As noted, the law specifies that the citizen must pay "market price" to acquire ownership of land from the state, or an "agreed" price if the land is in private ownership. The citizen also will have to pay for the actions required to gain retroactive administrative approvals. Some citizens will have to reconstruct their houses or buildings in order to accommodate rights of way or public spaces. Some may have to vacate entirely, in which case the government is required to provide them with an alternative parcel of land but not compensation for loss of their illegal building. The citizens will also have to pay for the surveys and documentation, administrative fees and "technical conditions" imposed by the Territorial Adjustment Committees, municipal administrations, registry and land administrations. It is to be hoped that in the zones where donors have previously surveyed and assembled the data, the agencies will not require its duplication.

The final number of commercial buildings needing legalization may turn out to be larger than expected and to pose a very substantial problem. It is unclear how such cases will be regularized where clear conflicts with other applicable laws exist (environmental regulations, rights of way, etc.)

In preparation for implementation of the Law, two "next-step" actions should be carried out: (a) review of the 54,000 cases submitted, to develop a database, analyze the typology of illegal buildings, and identify potential issues in implementing the law; (b) a public campaign to promote the spirit of the law, particularly for the informal settlements. An option to revise the law, extending the deadline if necessary, should be explored.

It must be noted that the law *On Legalization and Urban Planning of Informal Zones* does not define a mechanism to finance the infrastructure that will be needed to transform the zones into well-functioning urban areas. It only provides that urban planning studies will be carried out and that the municipal administration will take the necessary actions to remove buildings and structures in the way of public facilities.

### **2.3 The legal and institutional status of the IPRS**

The law of 1994, which created the IPRS, has been recognized as falling short in description of its functions and status.<sup>44</sup> In particular, reports and audits have noted inadequate funding and the limitations of the civil service system to meet IPRS skills profile requirements and management.<sup>45</sup> As a result, in 2003, the government and parliament began to consider amendments to the law, which would change its administrative subordination. A draft prepared by the IPRS sought to re-establish the agency as a self-managed and self-financed quasi-governmental entity. An alternative introduced by the Ministry of Justice proposed transfer of the IPRS to its supervision and retention of IPRS' status within the civil service management system and within the national budget. In May 2005, Parliament adopted the Ministry of Justice proposal.

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<sup>44</sup> Law no. 7843 of 13 July 1994, *On the Immovable Property Registration System*.

<sup>45</sup> See Ernst and Young Albania, *Management and Financial Audit of the First Registration Project Management Unit on Funds Provided by USAID*, 14 January 2002; KPMG Albania, *Review of the 14 January 2002 Auditor's Report Management and Financial Audit of the PMU*, 29 March 2002; Deloitte and Touche, *Management and Financial Audit Reports of the European Union Support to the Project Management Unit for the Immovable Property Registry System*, 3 June 2002.

The provisions of the new law are limited to its structure and subordination and do not address the broader set of unresolved questions about its functional relations and legal status with parallel and overlapping jurisdictions.<sup>46</sup> Based on both the Civil Code and the 1994 law, the IPRS is to become the exclusive source of information about immovable property rights, with a guarantee of accuracy based on the "chain" of registered transactions. This guarantee means that the courts must exclude from evidence documentation about property rights that emerges from sources outside the registry. Similarly, it means that notaries, mediators and other agencies must rely on and give priority to the IPRS data in making any decisions on the existence, status and ownership of rights or subordinate rights in property. If the system is to work, then this principle of priority must be fixed not only in IPRS legislation, but in related laws such as the law *On Notary Practice* and the *Civil Procedure Code*. If agencies create other databanks in which properties are defined with different characteristics, and they assert this data as superior to the IPRS in any case of discrepancy, then the civil law guarantee in the registry will be undermined. There is a clear need for legislation and practical agreements among the agencies to ensure the mutual flow of data and the rules for its assemblage, transmission and use.<sup>47</sup>

Another aspect of the re-organization of the IPRS involves its management structure and operation. Audits and evaluations have showed that citizens face delay, high costs and confusion whenever they attempt to carry out transactions at the registry offices.<sup>48</sup> A customer survey of the IPRS completed in September 2005 found that many customers spend months trying to complete a single procedure, and must visit the IPRS office five, ten, twenty times and more. The pressure to pay bribes is seen as a major cause for this, and the amount of bribes was found to reach into the thousands of dollars. It was noted that there is great variation among the districts studied, with some performing relatively well, suggesting that these problems are not an inevitable consequence of the IPRS system nor in Albania.

In conjunction with external stakeholders, the Government has undertaken renewed initiatives to provide training, technical equipment, and improvements to the accounting and managerial procedures. It is important to recognize, however, that there are legal aspects of the IPRS that make it different from a typical EU registry and affect its ability to provide "streamlined" service. In typical European practice, the civil law has a unified (rather than a categorical) concept of ownership and other rights. As a result, legal documents are standard in form and can be handled in routine ways. For most transactions, a registry clerk only needs to check the accuracy of a new document in light of the previous "chain" of documents, before noting it on the registry page. In Albania, the documents presented to the IPRS vary by property category and by the origin of rights in the different privatization or restitution programs.<sup>49</sup> The process requires judgments about the status of the parties and their capacities to deal with property of the particular type. The registry personnel assess the form, and look behind the assertions made in the transaction documents, often requiring additional substantiating

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<sup>46</sup> See ARD Inc. for USAID, *Albania Registration Organizational Improvement Project, Final Report*, 30 December 2004; see also William Valletta and Rudina Jasini, *Registimi i pasurive te paluajtshme dhe impakti tij mbi te drejtat e pronesise* ("The Immovable Property Registration and Its Impact on Civil Law Property Rights"), in *Jeta Juridike* (Journal of the Albanian School of Magistrates, no. 3, 2004).

<sup>47</sup> The various categorical laws authorize the creation of different cadastres and registries that are supposed to fit together into a unified system. The IPRS has not been cooperative in allowing access to its data and maps. In November 2004, the USAID-sponsored first-registration project distributed copies of the maps and data of the 16 urban zones after the IPRS refused to offer this data to the cities.

<sup>48</sup> Gavin Adlinton (2005).

<sup>49</sup> For example, the Regulations of the IPRS detail over 20 separate sources of origin for land and property rights, each of which has its own set of required documents, substantiating ownership or subordinate rights of possession.

documents. The IPRS subjects most applications to several levels of technical and supervisory review.

The new Law No. 9407 provides an opportunity to address these issues of inter-agency relationship, legal status and the function of the IPRS from the new perspective of oversight by the Ministry of Justice. It offers potentially closer collaboration and coordination with notary services, courts and related judicial services; on the other hand, it may create some new tensions with other agency structures in the spheres of surveying, geography and map services, and rural land management.

## 2.4 Taxation of land and property

Land and property taxation has been envisioned as a potentially significant source of revenue for local self-government, but is not yet playing an important role. Law No. 7805 of 1994 authorized taxation of land and buildings on the basis of a fixed rate per square meter of building, and per hectare of land depending on use category. However, taxation of land on the basis of this law was later exempted.<sup>50</sup> Similarly, a law on taxation of agricultural land was authorized and then suspended. Law No. 8982 of 2002, *On the System of Local Taxes*, re-defined the authority of local governments to levy taxes on land and buildings, including on agricultural land. Also subject to local taxation is the transfer of the right of ownership in immovable property and the hookup of a new building to infrastructure.<sup>51</sup> The law *On the Value Added Tax* was amended to provide that, after December 31, 2005, commercial and industrial buildings (not housing) will be subject to VAT when they are sold.<sup>52</sup> The VAT will not be levied against rent payments in any building. (See Appendix 13.)

The Department of Taxation (under the Ministry of Finance) reports that for 2003 and 2004, no revenue has been collected from the land tax or from the building tax.<sup>53</sup> The transaction tax is being collected by the IPRS as a pre-condition for registration of a purchase/sale agreement. It appears, however, that many people avoid paying this tax by failing to register their transactions, and many of those who do pay appear to understate the price paid in the transaction. Commentators state that the inability thus far to levy the land and building taxes is the result of inability to determine the owners of land and buildings subject to the taxes. Other reasons cited are methods of valuation and the persistence of legal exemptions.<sup>54</sup> The Government is addressing this through initiatives (undertaken in partnership with DfID) that focus on the national tax administration.<sup>55</sup>

## 2.5 Valuation

Since the start of land reform, the laws of Albania have anticipated the development of two methods of land and property valuation. For transactions between private parties, their freely negotiated agreement can set the price or rental value. For transactions involving state land or the acquisition by the state of private land through expropriation or temporary taking, a method of

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<sup>50</sup> Law No. 7805 of 16 March 1994, modified by Law No. 8344 of 13 May 1998.

<sup>51</sup> Law No. 8982 of 12 December 2002, *On the System of Local Taxes*.

<sup>52</sup> Law no. 7982 of 27 April 1995, *On the Value Added Tax*, Article 20.

<sup>53</sup> Website of the Ministry of Taxation, [www.tatime.gov.al](http://www.tatime.gov.al).

<sup>54</sup> See Decentralization in Transition, World Bank (2004), a study of Albanian local government.

<sup>55</sup> See [www.tatime.gov.al](http://www.tatime.gov.al).

valuation defined by decree of the Council of Ministers would apply.<sup>56</sup> The state valuation method has been defined in a decree of 2000, *On the Criteria for Valuation and Computation of Compensation*. It anticipates that the IPRS databank will record the purchase/sale prices, lease rentals or other transaction values, and it directs the expert who represents a state agency undertaking a transaction to assemble a group of comparable recent sales/leases from this data. In the event that comparable properties have not recently been recorded, the expert is instructed to use an objective method. In the case of a building, the construction price index is to be applied with adjustments to the building's age and functions. In the case of agricultural land, the fertility and moisture content measures are to be considered, with a coefficient of distance of the property from an urban center.<sup>57</sup> Recently, the same approach, based on objective data intended to model land productivity with additional coefficients of location and development potential, has been used in the draft methodology of the State Committee on Restitution and Compensation. The results of this methodology have drawn the concerns, noted above, of high values for urban and agricultural land.

With respect to private land dealings, the profession of appraisers has been established in Albania. Appraisers' services are used in transactions in accordance with the choice of the parties. For some types of properties, particularly apartment units, there is widely-available data on selling prices and rents. The practical problem that remains is how to clarify the "true" terms and conditions that accompany transactions in land and larger-scale developments. Since most such cases involve a mix of civil law and administrative actions, the valuation of elements of the "deal" fall under both the market-valuation and the state-valuation methods. There is a strong tendency to keep many elements in the shadows. Thus, there appears to be a need to consider more ways to allow information about prices and rents to circulate through non-state institutions (such as brokerage services or associations) without creating a risk of increased tax or other liabilities for the parties who engage in transactions reported.

## 2.6 Mortgage and finance

Up to the present, mortgage lending in Albania has been at a very low level. IPRS user data shows 4,900 mortgages registered in 2003 and only 518 in the first eight months of 2004.<sup>58</sup> Most of these mortgages are recorded in the urban hypotek, consistent with the view that rural land rarely is made subject to mortgage. (See Appendix 14.)

Most commentators attribute the low volume of mortgage lending to the weakness of the banking system and the limited ability of the business sector to absorb capital.<sup>59</sup> Other factors appear to play a role. There is no law on mortgages; thus, the provisions of the Civil Code on "pledge" serve as the legal basis of any collateral agreement. The procedures for foreclosure are cumbersome, with a process that can stretch over several years' time. An additional problem, cited by bank representatives, is the difficulty of dealing with the bailiff's office to execute a court decision on foreclosure and vacating a property.<sup>60</sup>

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<sup>56</sup> See Law No. 7501 of 19 January 1991, *On Land*, Articles 4 and 19; Law No. 7980 of 27 July 1995, *On Buying and Selling of Urban Building Sites*, Article 8; Law No. 8561 of 22 December 1999, *On Expropriation and Temporary Takings for the Public Interest*, Articles 4 and 17.

<sup>57</sup> Council of Ministers Decree no. 138 of 23 March 2000, *On the Technical Criteria of Valuation and Computation of Compensation*.

<sup>58</sup> Higher numbers of mortgages were registered in 2001 (over 6,000) and 2002 (over 7,900).

<sup>59</sup> See Albania Enterprise Development and Export Market Services—EDEM (2004), *Survey of Lenders in Albania*, a report prepared for USAID, <http://www.dec.org>.

<sup>60</sup> One aspect of this is that the bailiffs frequently have no transport, so that the bank itself provides the car to take an officer to the site.

In this context, Albanian builders have devised some practical strategies. Typically, the developer of an apartment house or office building assembles the transaction by making a contractual promise to transfer (at the project's end) ownership of a certain number of apartments or office suites. Each landowner becomes a shareholder in the future building. When construction permits are issued, the developer "pre-sells" the future apartments or office spaces to tenants, who pay in installments as stages are reached in the construction process. Each round of payments funds the next stage of construction. At the end, the transfers of apartments or offices are made to the landowners/shareholders who convey them to the pre-sale tenants. Since none of the agreements are civil law property transactions, they are not registered, and the landowners and tenants have no civil law protection until the very end. To remedy this risk and thereby make pre-sale more attractive for buyers, the parliament passed in February 2004 an amendment to the Construction Law, sponsored by the national Builders' Association,<sup>61</sup> that authorizes the IPRS to create a system of "temporary registration" of the land contracts and the pre-sale agreements. However, the IPRS has not yet created the regulations and procedures for "temporary registration."

Development partners' activity in the area of mortgage lending has included the offer of training to banks in development of forms and procedures for lending, and to enterprises in making loan applications. There are several initiatives aimed to assist the development of credit unions and micro-lending institutions. As the client base has grown and some assisted enterprises have "graduated" to larger scale credit needs, there has been discussion of assisting some mortgage applications; however, this appears not yet to be taking place.

## **2.7 Coastal tourism zones**

The "coastal zone" has no definition in law; rather, it is a concept of planning, included in policy documents and international agreements.<sup>62</sup> A "tourism development zone," on the other hand, is a category defined in the law.<sup>63</sup> In affected areas, these two concepts are superimposed on the general questions of land and property ownership and on the environmental laws and programs for water, land and resource protection. Thus the coastal zones and their tourism areas present a particularly complex structure of land tenure, regulation and planning. (See Appendix 15.)

The law *On Priority Tourism Development Zones* defines a special regime, with the intent of ensuring that investment in these zones will benefit Albanian society broadly, not merely give a "windfall" gain to private owners and investors. The law also anticipates the need for regulation of development, given the sensitive environmental context. For both purposes, the law authorizes the Ministry of Territorial Adjustment and Tourism to fix the zones based on a process of planning, and define their future development within the Tourism Development Strategy. For each zone, the Ministry may implement a two-level system of permitted and prohibited uses. The first-level permitted uses may include agriculture, forest and pasture as existing conditions. Second-level resort, hotel and related uses are designated as "promoted activities" for tourism. When a promoted activity is proposed, the Ministry may intervene "as representative of the owner

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<sup>61</sup> Law No. 8402 of 10 September 1998 (amended by Law No. 9200 of 26 February 2004, *On the Control and Discipline of Construction Work*, Article 12/1.

<sup>62</sup> See Mediterranean Environmental Technical Assistance Program (METAP) Coastal Zone Management Plan, Final Report, Phase One, 1995 and Phase Two, 1996.

<sup>63</sup> Law No. 7665 of 21 January 1993, *On Priority Tourism Development Zones*.

of the land" for the purpose of concluding a lease of the site to the project developer.<sup>64</sup> In this way, the Ministry both controls the planning/regulation and brokers the business deal.

The primary problem in the coastal regions has been the lack of ability to define and enforce environmental standards, control development decision-making, and limit *ad hoc* fragmentation of land rights. The situation is further complicated by unresolved restitution claims and land title disputes. Government initiatives undertaken in concert with the World Bank and development partners aim to address these problems by the creation of participatory planning procedures and the strengthening of coordination and capacities of ministerial and local government units.<sup>65</sup> Sporadic enforcement activities have been undertaken, but so far sustained methods of cooperation among agencies and local governments have not been engaged.<sup>66</sup> Thus the coastal zone remains an area in which strong efforts must be made to define a workable system of coordinated administration linked to the resolution of property tenure questions.

### **Part 3. Land use, land management and environmental regulation**

Reforms of the systems of land use control, land management and environmental protection have moved forward more slowly than land tenure activity. This is due in part to limitations of funding and staffing, but most of all to the need to find new methodologies in a situation of dynamic demographic, spatial and economic change. There have been a number of distinct projects in which new methods of use regulations, planning, development controls and environmental regulations have been tested. These have provided learning opportunities for professionals and practical solutions. They have influenced subsequent Government initiatives in policy formation and institutional integration.<sup>67</sup> However, they have not resulted in fully coherent and coordinated systems of rural or urban land management.

#### **3.1 Rural land administration**

In rural areas, there has been an effort to consolidate into two systems of regulation and management the different regimes of law covering agricultural fields, pastures and meadows, forests, lands related to water bodies, and specially-protected lands. Two hierarchical administrative structures have been created, both under the Ministry of Agriculture and Food. The first is the General Directorate of Forests and Pastures (Forest Directorate), which has subdivisions with jurisdiction over (1) the upland forests and pastures remaining in direct state control, (2) communal forests and pastures, and (3) specially protected areas. The Forest Directorate has field personnel in 36 district sections and 103 local offices, and a separate unit of Forest Police has inspection and enforcement powers. Second, for agricultural fields and the lands within villages, a two-level structure for Land Administration and Protection has been created.<sup>68</sup> Within it, Land Management and Protection Sections operate in 12 offices under

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<sup>64</sup> Law No. 8402, Article 7.

<sup>65</sup> See United Nations Environmental Programme (2004) Conservation of Wetlands and Coastal Environmental Systems project (MedWest) Report, [www.medwestcoast.com](http://www.medwestcoast.com).

<sup>66</sup> For example, in the summer of 2004, the National Committee on Territorial Adjustment ordered the local communal officers in Golem, Tirana region, to stop giving grants of building sites in beachfront areas.

<sup>67</sup> The national government has adopted a Strategy for Agricultural Development (called the "Green Strategy") which incorporates many current principles of best practice for balanced development, environmental protection and preservation in rural areas. See UN Economic Council for Europe (2000), Albania National Report for the Joint EFC Timber Committee, [www.unece.org](http://www.unece.org).

<sup>68</sup> Law No. 8752 of 26 March 2001, *On Establishing Structures for the Administration and Protection of Soils*; Decision of the Council of Ministers No. 532 of 31 October 2002, *On the Functioning of the District*

regional (*qark*) supervision, and 36 Land Management and Protection Offices are linked to the communal administrations. At both levels, this structure deals with private, state and communal lands without distinction in methodology. (See Appendix 16.)

The tasks of management and regulation of the two organizations are much the same. In the case of the regional Forest Directorate, Sections create the management plans for the areas within their direct jurisdiction and they negotiate, finalize and archive the leases, use rights and licenses given to enterprises and individuals. Communal Forest Directorate offices assist the communes in preparing management plans and creating the subordinate use rights for local citizens. A forest cadastre has been authorized. In the case of Land Administration and Protection, its Sections are authorized to create a land cadastre and establish geographic data.<sup>69</sup> They prepare technical studies to support decisions concerning urban expansion and programs for land quality improvement and re-consolidation of farmland. The regional Sections also conduct valuation of land for purposes of taxation, expropriation, compensation and penalties for damage to land quality. Communal Land Management and Protection Offices have authority to arrange for the leasing or grant of use permits or licenses for the communal agricultural holdings.<sup>70</sup> They are expected to monitor the use of land by any owner for compliance with environmental protection requirements, land use and quality preservation regulations and other conditions or restrictions included in a lease or use agreement. They must investigate complaints about the non-use or misuse of land, and initiate enforcement procedures that can lead to a withdrawal of land rights from the violator.

The Forest Directorate has received external assistance in organizing planning, regulatory and management systems. The new Land Administration and Protection units have not yet received comparable assistance, although the Ministry would be amenable to it.

The critical elements of the system of land management are the methodologies for collecting and analyzing data and maintaining the cadastres. The Land Administration and Protection staff are expected to study and record information on the physical attributes of land; in particular, its fertility.<sup>71</sup> This should distinguish their work from the IPRS, which assembles legal data, and from the Forest Directorate, which is primarily concerned with resources (flora and fauna) rather than land. In practice, of course, there is overlap, duplication of effort and competition for data sources and "customers." The methodologies for land management remain the Communist-era techniques of "bonitimi" measurement—that is, the assembly of indicators of soil fertility, moisture and productive capacity as the basis for the resource valuation of land. In theory, these methodologies allow accurate guidance to be given on farming and forestry practices—choice of crops, rotation schedules, fertilization, thinning, etc.—and on projects and programs to prevent degradation and enhance soil quality. They also allow the fixing of baseline conditions in the cadastre, against which the results of subsequent inspections can be measured, for enforcement purposes.

Recent evaluation of the capabilities of the General Directorate of Forests and Pastures and the Land Administration and Protection agencies highlights skepticism about the

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*Sections of Land Administration and Protection and the Local Offices of Land Administration and Protection.*

<sup>69</sup> Law No. 8752 of 26 March 2001, Article 12; Decision of the Council of Ministers No. 532 of 31 October 2002, *On the Functioning of the District Sections of Land Administration and Protection and the Local Offices of Land Administration and Protection.*

<sup>70</sup> Law No. 8752 of 26 March 2001, Article 13.

<sup>71</sup> Council of Ministers Decision No. 532 of 2002, *On the Exercise of the Method of Functioning by Sections and Offices of Land Administration and Protection.*

effectiveness of their methodologies<sup>72</sup> and a need to build the capability of the administrative staff.<sup>73</sup>

### 3.2 Urban land administration

The processes of urban land use regulation and development planning have undergone two major revisions in the last ten years, and been the object of numerous pilot and demonstration projects. So far, however, there does not appear to be a satisfactory system in place, primarily because the technical methods of planning and regulation have not kept pace with the dynamic of change in the major cities.<sup>74</sup> The planning methods of the socialist era superimposed a pattern of streets, public spaces and fully-sized building elements on any landscape by means of a General Plan or a subsidiary "urban study." The law *On Urban Planning*, both in its 1994 and 1998 versions, preserved these plans and studies as the basic elements of planning and regulatory control.<sup>75</sup> However, any contemporary development proposal must deal with fragmented land and property units in a mix of private, state and municipal ownership, and for such a context the General Plans and urban studies have insufficient technical precision and legal status. (See Appendix 17.) From the point of view of investors, the lack of coordination between municipal planning authorities and state-owned utility authorities requires investors to go back and forth between the agencies. Without clearly-defined procedures and criteria for issuing building permits, municipalities often exercise non-transparent discretionary powers, causing serious shortages in urban and social infrastructure in urban areas. An issue of "densification" has arisen: In Tirana during the last few years, more than 200 middle-rise buildings (8-12 stories) and 15 high rise buildings (12 stories or more) have been built. Similar development is occurring in Durres and other key cities.

Several new approaches have been tried, notably "zoning" and "strategic planning" demonstration projects.<sup>76</sup> Zoning appears not to provide a satisfactory approach because the Albanian context is different from that of zoning's traditional application in Western Europe and America, where pre-defined use and design standards are applied to land parcels with relatively uniform sizes and shapes and on city blocks with well-demarcated public and private spaces. This methodology, which creates a legal "development right" in each parcel, does not function when the individual parcels are too small and odd-shaped to underlie a typical building. In such a case, the regulatory standards must apply to the process of consolidation rather than a pre-defined spatial layout.

Awaiting effective land use regulations, urban planning and development have had an *ad hoc*, site-by-site, or area-by-area flavor. The primary planning and development activities have been the preparation of small-scale urban studies (paid for by developers) and city-sponsored programs of enforcement (e.g., removing illegal buildings) and infrastructure improvements. These actions have not coalesced into routine procedures or uniform regulatory standards. They involve "negotiation," rather than the application of pre-defined rules and standards, and are thus

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<sup>72</sup> Patrick MacAuslan (2003) finds that the monitoring and enforcement activities are ineffective because of limited numbers of inspectors and the complex processes of bringing actions against violators; Albania Land Use Policy, EuropeAid Report No. 112672, at pp 14-16.

<sup>73</sup> ARD, Inc. (2003) Albania Biodiversity Assessment, report prepared for USAID.

<sup>74</sup> Richard Gaynor and David Bledsoe (2000), *Evaluation of the Albanian Land Market*, ARD, Inc. and Checci for USAID.

<sup>75</sup> Law No. 7693 of 20 April 1993, amended by Law No. 8405 of 17 September 1998, *On Urban Planning*.

<sup>76</sup> See Besnik Aliaj, Keida Lulo and Genc Myftui (2003), *Tirana: The Challenge of Urban Development*, Cetis, Tirana, at pp. 62-82, describing the multiple plans.

subject to a wide variety of abuses. Some initiatives are underway (particularly in Tirana) to reconsider the legal and planning bases of land use regulation.

### 3.3 Environmental regulation

The law *On Environmental Protection* places on all persons using natural resources the responsibility to avoid actions that cause damage, pollution or deterioration of natural qualities. The law envisions three major administrative mechanisms that will be used to achieve compliance: (1) a system of monitoring of environmental conditions, inspection, and enforcement of laws and standards; (2) a system of environmental permits allowing resource use; and (3) preparation of Environmental Impact Assessments as part of the planning for new developments and programs to exploit resources. Because the law requires the drafting and adoption of new legislation to define the details of each of these mechanisms, it is not clear yet how they will encompass the activities of land use regulation, land management and soil protection. (See Appendix 18.)

Institutionally, the Ministry of Environmental Protection administers the law; the National Environmental Council (subordinate to the Council of Ministers) assists the Ministry in setting policy and preparing the National Environmental Strategy; regional Environmental Agencies in the 12 *qarks* have the primary power to enforce laws and standards; local environmental agencies are defined as units of local self-government; and the Environmental Inspectorate has powers to stop activities causing pollution and damaging the environment. Evaluations of this structure have found several weaknesses, including the failure to separate permitting and control functions.<sup>77</sup> Moreover, there is an overlap of the functions of the regional Environmental Agencies with the Land Administration and Protection Sections and the Forest Directorates. As a practical matter the Environmental Protection Ministry has not been given a large staff, so there is not significant friction between ministerial groups. One approach to these problems has been creation of cooperative structures of planning and project management that join together pertinent units of the two ministries, together with local and regional governments, NGOs and user groups.<sup>78</sup>

The environmental assessment procedure is made applicable by law to a wide variety of construction and resource exploitation projects, and strategic environmental impact assessments are envisioned for major policy initiatives.<sup>79</sup> This process is still being developed and the methodologies and expertise are being formed in the context of a few demonstration projects.<sup>80</sup>

## Part 4. Recommendations for Next Steps on Land and Property Reform

Albania's land reform has succeeded in creating the super-structure of modern civil law and administration, yet further steps are required to achieve day-to-day practical functioning. Citizens and enterprises work under a heavy burden of costs, delays and distortion and they often

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<sup>77</sup> UN Economic Commission for Europe (2002), Memorandum of the Committee on Environmental Policy, Report CEP 2002/7, [www.unece.org](http://www.unece.org).

<sup>78</sup> See United Nations Development Programme (2005), Country Evaluation, Assessment of Development Results, 2002-2004, <http://intra.undp.org.al>. See also Patrick MacAuslan (2003), Albania Land Use Policy, EuropeAid Report No. 112672 at pg. 48, quoting the UNECE (2002) report, *On the Environment of Albania*.

<sup>79</sup> Law No. 8990 of 23 June 2003, *On Environmental Impact Assessment*.

<sup>80</sup> See, for example, Lake Ohrid Conservation Project (2002), *Lake Ohrid and Its Watershed, State of the Environment Report*, World Bank Global Environment Facility, Albania Ministry of Environment and Macedonia Ministry of Environment and Physical Planning.

forego the protections of civil law for alternative family and customary business practices. In doing so, they deny themselves the opportunity to benefit from mortgages and other finance and business arrangements available in other economies. In many policy documents, the Government has stated its commitment to carry forward reforms that can strengthen property rights and market relations and achieve more effective management and regulation of land.<sup>81</sup>

The Albania Country Assistance Strategy (CAS) jointly prepared by the Government of Albania and the World Bank proposes a framework of priorities in which land and property reform finds its place in the overall development context.<sup>82</sup> The CAS highlights three broad themes:

- Improving governance—strengthening the institutions of government in order to provide efficient and inclusive public services at all levels, with emphasis on community-based approaches;
- Promoting sustainable private sector growth—improving infrastructure, completing privatization, encouraging growth of agriculture and the sustainable use of natural resources; and
- Promoting human development—ensuring access to education and health services and strengthening the social welfare system.

Within the first two thematic areas of this framework, several of the tasks of land and property reform appear to have priority.

1. The unresolved policy of restitution and compensation remains the major obstacle blocking the completion of the land tenure programs and first registration. The law adopted in July 2004 made the key policy choices that the government is now trying to implement. Without successful resolution of these issues, private property and private sector growth will remain blocked, particularly in coastal tourism areas, and informal and corrupt transactions will continue to dominate. The support of development partners would be appropriate in the area of technical assistance, such as providing expert review of draft valuation methods.
2. Systematic first registration is proceeding at a low level, with a substantial number of urban and economic priority zones still to be addressed. As an outcome of the initiatives undertaken so far, there is a fairly efficient, transparent and cost-effective method for tendering survey and registration contracts as well as technical methodologies for accurate data assembly. The system will remain weak if it does not encompass the full territory of cities and coastal zones. Completion of first registration should be a high priority.
3. In the context of completing systematic first registration and implementing the law transferring the IPRS into the Ministry of Justice, the administrative linkages of the IPRS should be refined, considering and setting the working relations of the judiciary, notary service, land administration and protection, territorial adjustment and other agencies, to accomplish the legal guarantee of the registry "chain of title." Without such institutional re-organization, citizens and enterprises will continue to face high transaction costs and weak protection of their legal rights in property.

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<sup>81</sup> See Ministry of Finance of Albania (2004), *Priorities under the National Strategy of Social and Economic Development (NSSED)*, [www.minfin.gov.al](http://www.minfin.gov.al).

<sup>82</sup> See World Bank (2002), *Draft Country Assistance Strategy 2003-2005*.

4. Formalization/legalization of large-scale peri-urban settlements should be completed at high priority. The Government's initiative had a strong beginning with the receipt of 54,000 citizen "self-declaration" forms. The law describes a logical process of planning, legal and administrative actions, and economic arrangements aimed to result in full legal status for thousands of citizens and can bring the enormous value of their investments into the formal economy. Coordination of the process will be necessary to prevent wasteful duplication of mapmaking, surveying, and document preparation, and to ensure that unreasonable costs are not heaped upon the citizens. Further, the processes of applying methods of valuation should be monitored to ensure that distorted land and property prices are not imposed on citizens; in the end, the success of efforts to formalize and legalize large-scale peri-urban settlements will depend on development of a socially acceptable and affordable valuation method for the properties affected. Legalization would induce subsequent registration of the settlements, which would not only secure land tenure for the residents but also enable the municipalities to collect property taxes and fees for infrastructure development.
5. In rural districts, a three-part effort should be envisioned. First, the process of transferring forest and pasture tracts into communal control should continue. This is necessary both to assist the rural economy and society and to improve the environment. There should be a strong focus on the lower levels of citizen rights, transforming the practical agreements that villagers work out among themselves into routine legal forms. Second, assistance to the regional and local agencies of land administration and protection should focus on the ways in which they provide service to farmers and rural families. Technical help should be given to transform the methodologies of land quality measurement and of monitoring and enforcement, to make these applicable to the context of family farms and to give them a service orientation. They should accommodate flexible cooperative agreements among farm families; offer cheap and fast registration of leases and use agreements; and provide simple methods—based in the village—for the resolution of neighbor and family land disputes. Third, the land administration and protection agencies should receive assistance and training in the management of public land, particularly in making determinations about lands in communal control—"refused" agricultural fields, other state-owned agricultural lands, and forest and pasture tracts that may be given in restitution or sold. Again, the emphasis should be placed on the development of practical legal arrangements.
6. In carrying out all aspects of assistance to rural and urban land reform, development partners need to work closely together as well as with the Government, to ensure that all efforts reinforce cooperative activity among the affected agencies. There is a tendency toward competition and duplication of systems, as well as bureaucratic biases toward administrative control and against citizen service. Fragmented and competitive projects exacerbate these tendencies and produce weaker outcomes for citizens, entrepreneurs and farmers. In particular, the expanding systems of GIS and land databanks should be scrutinized to ensure minimum duplication and maximum inter-agency data sharing.
7. Development of urban regulatory plans could provide key support to efforts to prevent further discretionary practices of municipalities in issuing building permits, and to guide the private sector in a more sustainable way. Such plans would not be physically-oriented master plans as seen in the socialist era, but rather plans that consider demographic forecasts, the current situation of urban and social infrastructure, and impacts on socio-economic aspects. Plans should be prepared in an open and transparent manner to ensure participation of concerned citizens. Such a plan is under preparation in Tirana (with the support of the Government of the Netherlands). Similar plans should be prepared for other key cities.

8. The element of environmental review should be strengthened with the purpose of showing how flexible, inexpensive and efficient methods of environmental impact assessment could be made a routine part of land administration. In particular, work in the coastal zones will require multi-faceted programs, combining questions of land tenure, land use regulation and management, environmental protection and rational resource use.

In designing its strategy to undertake these tasks and complete the process of reform, the Government may want to hold wide consultations with traditional groups and representatives from conflict resolution associations and local government representatives from communes where traditional laws still dominate the rules of the game.

## Appendix 1. Status of Land and Property Holdings by Category, 2005

Chart 1-1. Status of Land and Property Holdings by Category, 2005

Category of Properties	Est. Number of Units	Completed transfer --% all units	Completed registry -- % all units	Comments
Total Units of all Types	4,500,000			
<b>Rural properties</b>	3,300,000			
Agricultural fields	1,900,000 <sup>1</sup>	98%	80%	Restitution claims conflict with 7501 grants in 15-20 zones
Village plots and houses	400,000 <sup>2</sup>	95%	90%	40 rural zones remain with unregistered village centers
State-owned forest, pasture and protected lands	1,000,000 <sup>3</sup>			
-- communal forests, pastures	450,000	30%	05%	Inventory and transfer process under way
-- state forests, pastures	545,000		02%	Large tracts not subdivided
-- private forests, pastures	5,000	50%	25%	Limited restitution claims
<b>Urban properties</b>	900,000 <sup>4</sup>		10%	16 zones completed
Dwelling units (built before 1990)	237,700 <sup>5</sup>	98%	90%	Apartment units entered into IPRS
Individual houses (built before 1990)		100%	10%	16 zones completed
New legal dwelling units (1991-2004)	45,000 <sup>6</sup>	90%	10%	16 zones completed
Non-housing premises			10%	16 zones completed
State owned urban properties	180,000 <sup>7</sup>			
-- Municipal owned urban	150,000 <sup>8</sup>	05%	0%	8 out of 65 municipalities with completed inventory, one with approved transfer, 3 properties registered
<b>Illegal properties</b>				
-- Illegal properties in informal peri-urban zones	90,000 <sup>9</sup>	0%	0%	54,000 self-declaration forms filed
<b>Property Claims by Former Owners</b>	42,000 <sup>10</sup>	70%	30%	30,000 claims have been decided

Source: author's compilation<sup>11</sup>

<sup>1</sup> Land Market Assistance Project (2001), *Final Report*, presented to USAID.

<sup>2</sup> UN Economic Commission for Europe (2002) *Albania Country Profile, Housing Sector*, [www.unece.org](http://www.unece.org).

<sup>3</sup> Ministry of Agriculture and Food (2002) *Annual Report*.

<sup>4</sup> Estimate by Registry Organizational Improvement Project (USAID).

<sup>5</sup> United Nations Economic Commission for Europe (2002) *Albania Country Profile, Housing Sector*, [www.unece.org](http://www.unece.org).

<sup>6</sup> Data from 2001 Census of Population and Housing, presented in United Nations Economic Commission for Europe (2002) *Albania Country Profile, Housing Sector*, [www.unece.org](http://www.unece.org).

<sup>7</sup> Estimate based on results of 16 urban zones -- 20% of all properties; Registration Organizational Improvement Project (USAID).

<sup>8</sup> Estimate based on results reported by State Property Inventory Committee, March 2005.

<sup>9</sup> Estimate of illegal buildings in the "informal" zones, reported to the press by national Territorial Adjustment Committee, March 2005.

<sup>10</sup> Kathrine Kelm; see also Project Management Unit of Ministry of Agriculture and Food, *Land Market Action Plan 2002-2005*.

<sup>11</sup> Estimates are not available for all categories. The categorical estimates do not add up to the estimated totals because of gaps and overlaps.

## **Appendix 2. Structure of Government Agencies with Responsibilities for Land and Property**

### **Agencies of General Government Administration**

Parliament (Kuvendi)

Presidency

Council of Ministers

- National Environmental Council
- Immovable Property Registration System (*note the IPRS has been moved under the Ministry of Justice under new legislation adopted in May 2005*).
  - IPRS Districts -- 36
  - Cadastre zones -- 3,058

Courts

- Districts (Civil Law parts)

Regional State administrations

- Prefectures -- 12
- Districts (rrethet) -- 36

Local Self-governments

- Municipalities (over 15,000) -- 65
- Communes (under 15,000) -- 309

### **Agencies with responsibility for the initial creation of land and property rights**

- State Land Commission
- District Land Commissions -- 36
- Communal/municipal Land Commissions (discontinued)
- National Privatization Committee
- Housing Privatization Commissions (municipal)
- State Commission on Restitution and Compensation
- Restitution and Compensation Commissions

### **Agencies with responsibilities for land administration, regulation and management**

**Ministry of Agriculture and Food** (17 subordinate directorates plus related institutes)

- General Directorate of Forests and Pastures (1,250 employees in 2002)
  - Directorate of Forests and Pastures with
    - 36 district offices and
    - 130 forest sectors
  - Directorate of Forest Service Police
  - Directorate of Communal Forests and Pastures and Extension
    - 305 communes
    - Communal Forest Users Associations
  - Directorate of Protected Areas and Hunting
    - National Parks Administration
- General Directorate of Water Management

- Directorate of Land Administration
- Land Administration and Protections Sections -- 12 regions
- Land Administration and Protection Offices -- 36 districts
- Other units
  - Project Management Unit (for land titling)
  - Project Environmental Management Unit
  - Institute of Forest and Pasture Research
  - Institute of Soil Research
- Other rural development organizations
  - National Forum on Rural Development
  - Albania Development Fund (project management unit for rural infrastructure)

**Ministry of Environmental Protection** (six directorates)

- Directorate of Nature Protection
  - Regional Environmental Agencies -- 12 regions
  - Local Environmental Agencies -- linked to municipal administrations
- Directorate of Pollution Prevention
- Directorate of Environmental Impact Assessment
- Environmental Inspectorate
- Other
  - Project Management Unit
  - Institute of Environmental Protection
- National Environmental Council (Council of Ministers subordination)
- Prime Minister's Inter-sectoral Committee on Implementation of the National Environmental Action Plan

**Ministry of Territorial Adjustment and Tourism**

- Territorial Adjustment Commission of the Republic
  - District Territorial Adjustment Commissions -- 12
  - Tirana City Territorial Adjustment Commission
  - Large City Municipal Territorial Adjustment Commissions -- 13
- Directorate of Territorial Planning
- District Urban Planning Sections -- 12 (technical staff to TACs)
- Tirana Urban Planning Section
- Large City Urban Planning Sections -- 13
- Urban Planning Offices -- small cities and communes
- Directorate of Construction
- Construction Police
- Directorate of Public Infrastructure
- State Commission on Tourism Development
- Other
- Institute of Urban Studies and Projects

**Immovable Property Registration System** (subordinate to Council of Ministers, recently subordinate to Ministry of Justice)

- District Registries -- 36

**Ministry of Justice**

- Chamber of Notaries

**Ministry of Local Self Government**

- State Commission for Inventory and Transfer of Public Properties
- Inter-Ministerial National Committee on Decentralization, supported by the Technical Group on Decentralization

### Appendix 3. Government of Albania's International Partnerships Related to Land

Chart 3-1. International Partnerships Related to Land

Donor	Dates	Budget	Description
European Union PHARE		300 mill euro	FEOGA Agricultural support EDHIR democracy ECHO Humanitarian
European Union CARDS	2001-2004	187 mill euro	Justice and public order Public administration Trade and transport Environmental institutions Democracy
European Investment Bank			Basic infrastructure, energy, ports, water supply
International Monetary Fund		\$60 mill	Enterprise privatization Poverty reduction facility
World Bank IDA		\$719 mill	Poverty reduction support credit Fisheries Energy, transport NSSED sustainable development
World Bank IFC		\$130 mill	Financial sector SME lending Industrial rehabilitation
UN Development Program	2006-2010		Millennium Development Goals Regional government capacity Environmental protection institutions
USAID			Agro-business capacity SME credit Local government administration capacity Rule of law
German government		320 mill euro	Water and sewer infrastructure Energy, hydropower
Greek government		50 mill euro	Agriculture and rural infrastructure
Italian government		353 mill euro	Electricity, water, sewer, roads
Japan		\$52 mill	Agriculture sector adjustment
Switzerland			

#### Environment and Infrastructure

Project	Donor	End date	Budget	Description
National Water Strategy	PHARE AL9306	1997	400,000 ecu	Preparation of national Water Strategy
Feasibility Study for Sewage Treatment in Vlora	PHARE AL9306	1997	492,000 ecu	Reduce soil and water contamination by uncontrolled waste water disposal
Feasibility Study for Sewage Treatment in Pogradec	PHARE AL9306	1997	299,400 ecu	Reduce soil and water contamination by uncontrolled waste water disposal
Cleaning of Golem Beach	PHARE AL9306	1997	50,000 ecu	Demonstration coastal project

<b>Project</b>	<b>Donor</b>	<b>End date</b>	<b>Budget</b>	<b>Description</b>
Master Plan for Dajti National Park	PHARE AL9306	1997	50,000 ecu	Protected land management planning
Karavasta Lagoon Wetland Management	PHARE AL9306	1997	346 200 ecu	Karavasta Ramsar biodiversity protected land/water management
Institutional Support for Environmental Protection	PHARE AL9306	1995	695,800 ecu	Organization, training and technical development of State Committee on Environmental Protection; national Environmental Action Plan
Strengthen Regional Environmental Agencies	PHARE AL9306	1997	92,200 ecu	Organization, training and technical development of regional staff
Additional equipment Regional Environmental Agencies	PHARE AL9306	1998	98,300 ecu	Equip the offices of the REAs
Benchmark survey of Patos-Marinze oilfield	PHARE AL9306	1997		Pollution control planning and feasibility
Comprehensive Impact Assessment of Uranium Exploration	PHARE	1999	125, 000 ecu	Develop Environmental Impact Assessment methodology
Equipment for Scientific Laboratories	Med-Pol UNEP		\$40,000	Chemical laboratories for monitoring of Mediterranean coastal waters
Urban Waste Management	EU LIFE 96	1999	591,000 ecu	Landfills in six municipalities
Mediterranean Wetlands	EU LIFE MedWet	1998		Environmental, development and social study of Kune-Vaini lagoons
Biodiversity Protection	GEF W Bk	1999	\$96,000	Prepare the Biodiversity Strategy and Action Plan
Lake Ohrid Conservation	GEF W Bk	2003	\$184,000	Lake water monitoring and watershed management, institutional capacity and public participation
Durres Industrial Chemical Pollution	Italy		\$7,600	Removal of toxic waste from port and creation of safe storage
Environmental Regulatory Framework	PHARE COP96	1999	200,000 ecu	Strengthening of Environmental Protection agencies -- enforcement
Environmental Institutional Strengthening	PHARE COP97	2001	300,000 ecu	National Environment Action Plan implementation, policy formation for sustainable development
Conservation of Coastal Wetlands	GEF/PNU MedWet	2003	\$1.7 million	Mediterranean Region -- six countries -- legal framework and methodologies; Narta Lagoon monitoring
Update national Environmental Action Plan	METAP W Bk	2001	\$200,000	Develop a comprehensive national environmental policy
Environment Ministry Enforcement	DFID	2002	400,000 lb	Reorganization, training and management of the new Ministry of Environmental Protection
Institutional Strengthening of Environment Improvement	W Bk	2005	\$250,000	Hot spot of Porto Romano, Durres, as model for handling of dangerous waste
Integrated Water Management and Ecosystem Management	W Bk	Start 2005	\$4.87 mill	Wetlands in the Kune-Vain marsh area

<b>Project</b>	<b>Donor</b>	<b>End date</b>	<b>Budget</b>	<b>Description</b>
Fier Arsenic Cleanup	EU	2005	1 million euro	Disposal of arsenic from nitrate fertilizer plant
Environmental Hot Spot Clean Up in Vlora	UNEP MAP	2005	\$300,000	Develop remediation plan for clean up of Vlora PVC factory
Prespa lake Trans-boundary Ecosystems	UNDP GEF	2005	\$928,000	Protected lands regulation and watershed management
Biosecurity National Framework	UNEP GEF	2006	\$185,000/ \$123,000	Prepare national Bio-Safety Framework with risk assessment, management and public participation
Institutional Strengthening of Environmental Ministry	DIFD	2005	£300,000	Strengthen the National Environmental inspectorate for monitoring and enforcement
Effective Institute of Environment	Netherld	2006	1 mill euro	Rehabilitation of Institute of Environment for monitoring
Strengthen Environmental Monitoring	EU CARDS	Planned 2005	2.5 mill euro	Monitoring system
Landfill for Hazardous Wastes	EU CARDS	2007	600,000 euro	Design of hazardous waste storage facility
Wastewater Treatment Plant Balsh Oil refinery	EU CARDS	2007	900,000 euro	Rehabilitation of the refinery facility
Construction of Landfill for Hazardous Waste	EU CARDS		3.5 million euro	Construction of hazardous waste facility
National Center and Network Environmental Monitoring	EU CARDS		2.5 million euro	National environmental monitoring network tied into European system
Environmental Laws Harmonization	EU CARDS	2007	2.5 million euro	Prepare environmental legislation and sub-acts to relate with European system
Technical Assistance to Ministry of Environment	Italy			Proposed 2 million euro under Cooperation Protocol Italy/Albania
Butrint National Park Biodiversity	W Bk	2005	\$25,000	Feasibility and project design
Capacity development Biodiversity Strategy	GEF		\$324,000	Review progress of Biodiversity Strategy and prepare second report
Karavasta Lagoon Management	W Bk	2005	\$25,000	Preparation of project design
Ecosystem Management Lake Shkodra	W Bk	2006	\$175 000	Trans-boundary pollution control and Biodiversity
Solid Waste Management Korce	SIDA	2006	15 million S krone	Solid waste management plan and institutional organization

#### **Forest and Pasture**

Private Forestry Development	USAID	1996		Communal and private forest transfer Communal Forest Users Associations
Forestry Project	W Bk Italy	1997-2003	\$8 mill \$8.5	Institutional capacity of Forest Directorate; communal forest transfer
Natural Resources Development	W Bk	Start 2005	\$80 mill	Continue communal forest transfer Integrated management of watersheds
Korce TransBorder Wildlife				International Land Coalition

### Agriculture

Project	Donor	End date	Budget	Description
Rural Development in Remote Mountains	DFID Oxfam			Small infrastructure projects
Mountain Area Development Program	DFIC IFAD		\$23 mill	Poverty reduction and non-farm employment, irrigation rehabilitation
Northeastern District Rural development	IFAD		\$18.2 mill	
Strengthening Business Capacity in Agriculture	USAID	2004 2005	\$2.7 mill \$2.0 mill	Assistance to dairy producers
Community Works Project	EU	2002		Albanian Development Fund managed small infrastructure projects
Hellenic Plan for the Balkans	Greece			Rural drinking water
Assistance to Trade Associations	USAID IFDC	1992-98		Creation of farm producers associations
Assistance to Trade Associations	USAID IFDC	1998-2002		
Assistance to Trade Associations	USAID IFDC	2002-2003		Agriculture producers associations and credit unions

### Immovable Property Registration System

Project	Donor	End date	Budget	Description
Land Markets in Albania	USAID	1994-2001		Organization of IPRS First registration rural zones
Support for Immovable Property Registration System	PHARE	1994-2001		IPRS mapping capability First registration of rural zones
Registry Organizational Improvement	USAID	2002-2004	\$5 mill	First registration or urban and rural zones
Korce Region First Registration	EU	2004-2005		First registration

### Urban Land Use

Project	Donor	End date	Budget	Description
Land Use Policy	PHARE			Institutional capacity and GIS
Integrated Development Tirana-Durres	EU CARDS	Planned 2005	1 mill euro	Sustainable integrated development master plan for the corridor
Assistance to the Port of Durres	EU CARDS	Planned 2005	2 mill euro	Update the Port Master Plan

### Local Government

Project	Donor	End date	Budget	Description
Local Government Assistance	USAID	2005		Local budget and finance Property inventory
Civil registry and address system	EU CARDS	Planned 2005	2.5 mill euro	Address system
Local Community Development Program	EU CARDS	Planned 2005	7.5 mill euro	Infrastructure projects

## Appendix 4. The Origins of Land Reform in Albania

### The situation of land holding in 1989

In 1989 all land in Albania was owned by the state. The principle of exclusive state ownership was in the 1976 Constitution, which had been the final legal action abolishing all other forms of collective and personal property rights in land. By the late 1980's, after the death of Enver Hoxha, there was open recognition that the economy was in crisis. The causes lay in a wide range of distorted economic policies, but the strict control of land was an important element, particularly in the crisis in the agricultural sector.<sup>1</sup> The Ministry of Agriculture and Food has explained the economic and political origins of land reform in the following way:

In 1990, agriculture was short-changed in the national economic system. While it produced 52 percent of GDP and employed 54 percent of national labor force, the government drew revenue from farm production but gave back a disproportionately low share of payment and investment. While rural population was growing at 3 percent per year; farm production was growing at only 0.03 percent due to under funding of inputs and investment.

This caused difficult economic and social situations in the villages. Wages of state farm workers and agricultural cooperative members were at a minimal level. Furthermore, the unemployment in the rural areas was a critical problem; there were no job opportunities, while the cooperative gardens were totally eliminated for all farm families. ... People suffered economically, but could not protest. The only hopeful alternative for them was the establishment of a democracy.

...

During this period the rural population, disillusioned by the former cooperative system, and supported by the new political forces, requested the establishment of private ownership on land and the other means of production. To accomplish this, it was necessary to eliminate the former organizational structure of production: in particular the agricultural cooperatives and state agriculture economies.<sup>2</sup>

Legislative change came in 1991 when, in the midst of crisis conditions, the Communist government fell and elections brought to power the Democratic Party. The parliament adopted the law *On Constitutional Principles* of 1991, which repealed the constitution of 1976 and served as the interim basic law until the new Constitution in 1998. This law made reference to private ownership of land and committed the state to develop economic relations based on market principles.<sup>3</sup> It gave enabling power to the parliament and government to revise the structure of land and property ownership in Albania.

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<sup>1</sup> See Azeta Cungu and Johan Swinnen (1999) Albania's radical Agrarian reform, Vol. 47, Economic Development and Cultural Change, Vol. 47 (no. 3) at pp. 605-620.

<sup>2</sup> Ministry of Agriculture and Food of Albania (2002), Annual Report at pp. 16-17.

<sup>3</sup> Law no. 7491 of 29 April 1991, *On Constitutional Principles*.

## The initial laws on land distribution and property privatization

Three new laws, adopted in 1991/1992, initiated the programs of transfer of ownership rights in land and immovable property from the state to citizens and juridical persons. These laws contained a mix of elements, defining the relationships of persons to tangible objects and intangible property rights. Some elements were retained from the Communist period; others were drawn from European civil law (particularly from the Italian Civil Code). Still other elements reflected Albanian traditions of family and clan relations, and regional customs.<sup>4</sup>

Law no. 7501, *On Land*, authorized the subdivision and transfer of collective farm lands to the member families on an equitable share basis.<sup>5</sup> The law no. 7652 *On Privatization of State-Owned Housing*, allowed urban families to take ownership of the apartments and individual houses, which they occupied.<sup>6</sup> The law no. 7512, *On Sanctioning Private Property, Independent Initiative and Privatization*, provided for the transfer of buildings and business premises as part of the re-organization of enterprises and other organizations into juridical persons.<sup>7</sup> Law no. 7512 also authorized these new entities to own and lease urban land parcels, classified as building sites ("truall"). These laws brought into the Albanian legal system the basic institutes of civil law, related to immovable property -- ownership, leasehold and the right of use. However, the full content of these institutes could not be clarified, because the revision of the Civil Code was not complete until 1994. The terms and conditions for the acquisition, possession, use and disposition of each immovable object could be defined only by the category of the land or property object, as defined in each law and by the documents, which the state agencies issued when transferring the object.

From the Communist era, the laws retained the structure of land and property classification, which encompassed:

- two broad categories of land and property as rural or urban;
- mid-level categories of land, such as cultivated land, pasture land and orchards, urban building sites and tourism zone land; and
- specific designated uses (assigned by administrative decision at the time of transfer) -- house plot and individual residence, yard or garden plot, urban multi-family house plot, industrial, trade, etc.

This categorical structure meant that the elements of rights, obligations, limitations and restrictions would not be uniform for all lands and properties or for the individuals or juridical persons, eligible to acquire or dispose of them. Instead, each category of land -- agricultural, urban, forest, pasture, etc. -- would have its own regime of law. Only the state or persons of defined status could acquire, own or possess certain types of land and property. They could gain rights to use or develop the property only following the separately defined procedures for the particular type of land. They could dispose of the land only in the forms of transfer (sale, lease, right of use) specified for the category and only to the persons of defined status, allowed to take the rights.

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<sup>4</sup> Kathrine M. Kelm (2002), "Case Study: Albania," Regional Workshop on Land Issues in Central and Eastern Europe, Budapest, April 3-6, 2002. See Rachel Wheeler and Mirvjena Laha (1995) *Property Rights, Women and the Family in Contemporary Albania*, GIS/LIS Conference, Budapest.

<sup>5</sup> Law no. 7501 of 19 July 1991, *On Land*.

<sup>6</sup> Law no. 7652 of 23 December 1992, *On Privatization of State-Owned Housing*.

<sup>7</sup> Law no. 7512 of 10 August 1991, *On Sanctioning and Protecting Private Property*.

The programs of land and property distribution and privatization, authorized under the 1991-1992 laws reinforced the structure of categorical definition of land and property rights. Under each law a separate hierarchy of "commissions" was organized and each had the responsibility to define the units of property, define the persons eligible and authorize the transfer of the proper unit to the proper persons.<sup>8</sup> The legal documents, issued to the new owners (users) were different in form, substance and legal status, and they were kept in separate archives or registries.

The influence of the concepts, retained from the Communist era, was also strong in defining the limitations and restrictions, applicable to the different land categories. Forests and pastures were retained in state ownership, based on the idea that only the state could provide the regime of environmental protection and regulation of resource use. Mechanisms of common ownership or self-regulation, without a structure of state administrative control, were not considered. Sale of farmland was prohibited in the initial version of Law no. 7501; presumably this was to prevent speculation and insure that foreigners or outsiders would not gain control of the land in villages and communes. The lands of state farms (separate from the collectives) were distributed to farm employees only by right of use, not ownership.<sup>9</sup> When an individual house was transferred into the ownership of a citizen under Law no. 7501 or Law no. 7652, ownership of the land around the house was limited to 200 square meters (later allowed at 300 meters). This left any additional open land in state ownership and required the citizen either to buy it at full market price or secure control of it by lease or subordinate right of use.<sup>10</sup>

From Albanian custom and traditions, the new laws incorporated ideas of patriarchal family relations. In the division of farmland, the subdivided units of collective farm land were measured in size and value on a per capita basis but were transferred in consolidated form to the "head of the family."<sup>11</sup> Similarly, the transfer document for an apartment or house noted the head of the family as the owner, but usually with the family members also noted on the transfer deed.<sup>12</sup> The rights to farmland and housing were linked with ideas of social and economic welfare. For example, Article 5 of Law no. 7501, *On Land*, provided that, in mountain zones, where families might not get a minimum of agricultural land for subsistence, the State would "take measures" to guarantee them other sources of livelihood.

### **The restitution of properties to former owners**

Within a short time after enacting the initial laws, a different policy was adopted. This was the recognition of a right of restitution of immovable properties to families, which had lost

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<sup>8</sup> Cabinet of Ministers Decision no. 230 of 22 July 1991, *On Establishing the Land Commissions*.

<sup>9</sup> This limitation was later removed and under the law no. 8053 of 21 December 1995, *On Transferring Ownership of Agricultural Land without Compensation*, the ex-state farm employees could transform their use rights into ownership.

<sup>10</sup> The limitation of 200 square meters is set in the Regulations of the IPRS, Chapter IV, Sec. 13, which states that house plots are registered based on the Nomination List of Owners of Sites and Houses, provided in Council of Ministers Decree no. 432 of 14 August 1995. In practice, the residential owners do not buy out or pay for use of the state land but if there is to be new development or re-construction, the state must be "bought in" to the deal.

<sup>11</sup> Law no. 7501 of 19 July 1991, *On Land*, Article 7; Decree of the Council of Ministers no. 255 of 2 August 1991, *On the Criteria for Agricultural Land Division*. See Rachel Wheeler and Mirvjena Laha (1995) *Property Rights, Women and the Family in Contemporary Albania*, University of Wisconsin Land Tenure Center, paper presented at GIS/LIS Conference, Budapest.

<sup>12</sup> See Regulations of the IPRS no. 184 of 8 April 1999, *On the Work of the Immovable Property Registration Office*, Chapter 4, paragraph 8.4.

them in the acts of confiscation of the past. Law no. 7698 *On Restitution and Compensation of Former Owners* authorized the return of property or the grant of alternative land or compensation, when return of the specific property was not feasible today.<sup>13</sup> In order to avoid conflict with other policies of entitlement, restitution was not applied to all types of land and property. Farmland, distributed under Law no. 7501, was not made subject to restitution. Pastures and forestlands, remaining in state ownership, were also exempt from restitution. A house could be returned only if it had not been changed substantially from the past and only upon condition that its current occupants be allowed to remain under lease or be given an alternative dwelling unit. Land surrounding a house or apartment building could be returned to a former owner, with the building constituting a separately owned property unit. Former owners whose claims could not be satisfied were entitled to alternative grants of land or compensation, to be decided by subsequent government actions.<sup>14</sup>

The Ministry of Agriculture and Food has explained the reasoning behind the exemption of agricultural land from restitution in the following way:

... the agricultural land was not given back to former owners, as happened in other former communist countries, but was distributed to families that had lived in the villages. ... Land distribution was carried out on a per capita basis, which means that all farming families within the agricultural cooperatives received equal areas in terms of quantity and quality. This form of land distribution was defended with the argument that the agricultural area per capita in Albania is very limited (the average .22 ha. per person) as the majority of the country's population lived in villages (64 percent). In addition it was based on the changes that took place in Albania during the period of 1944-1990, changes that brought serious problems related to old boundary recognition and former ownership documents identification.<sup>15</sup>

For the former owners, whose claims could not be satisfied by return of the specific property, the state assumed the obligation to provide compensation from reserves of undistributed property or in other forms, to be determined.

### **Unauthorized land occupation and subdivision**

The law *On Restitution and Compensation of Former Property Owners* and the other laws that linked property with social welfare created a sense of entitlement to property among many groups and individuals. When economic conditions deteriorated, dissatisfied people seized state assets. In some villages, the families rejected the outcome of “equitable” distribution under Law no. 7501 and divided the land based on their own notions of restitution or entitlement.<sup>16</sup> Many rural residents moved to urban areas and staked out house and garden plots on vacant suburban land. Within cities, jobless workers squatted on public spaces to establish small trade and service operations.<sup>17</sup> Speculation, dissipation of state assets and the breakdown of orderly urban development reached a peak in 1997-1998 when the “pyramid” financial schemes, based on

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<sup>13</sup> Law no. 7658 of 15 April 1993, *On Restitution and Compensation of Former Property Owners*.

<sup>14</sup> Law no. 7699 of 21 April 1993 *On Compensating Former Owners for the Value of Agricultural Land*.

<sup>15</sup> Ministry of Agriculture and Food of Albania, *Annual Report 2002*, at pg. 17.

<sup>16</sup> See Haxhi Aliko (2001) *The Impact on the Development of a Land Market in Albania Caused by the Restitution and Compensation of Agricultural Land*, National Land Forum of Albania, paper presented at Conference on Transition, Institutions and the Rural Sector, the Hague, 10-11 December 2001, at pg. 13.

<sup>17</sup> See Besnik Aliaj, Keida Lulo and Genc Myftiu, (2003) *Tirana: The Challenge of Urban Development*, Institute for Habitat Development (Co-Plan), CETIS, Tirana, at pp. 66-72.

privatization vouchers, collapsed. The money savings of most families were wiped out, increasing the relative importance of their immovable property assets.

Several studies of the patterns of land holding and surveys of land occupants in villages and peri-urban areas have sought to explain the economic, social and legal aspects of the illegal land occupancy and informal development. They show that migration out of the mountain and rural areas has been motivated by limited economic opportunity—the breakdown of rural infrastructure for production and social support.<sup>18</sup> Migration into peripheral urban areas has not been chaotic, however, but has taken place within a system structured by political and clan or regional relationships,<sup>19</sup> and by customary intra-family rules.<sup>20</sup> In practice, there has developed a series of transaction documents, many based on the court order called the "vertitim e faktit," by which informally subdivided land parcels are created and transferred.<sup>21</sup>

In effect, many families have adopted a multi-location economic strategy.<sup>22</sup> Some family members remain in the village to work the farmland holdings. Others occupy a suburban plot in order to gain access to city jobs, schools, medical and social services. Other members have gone abroad and are expected to send back hard currency. From these sources, families are able to assemble capital for new or renovated housing or for business premises (usually sited on their "illegal" suburban land parcel).<sup>23</sup>

### **Civil law reform**

The Constitution of Albania of 1998 makes reference to the institutes of "private and public property" as bases of the economic system, and it states four aspects of the content of these institutes. First, the two forms are to be "equally protected by law." Second, the right of private property is guaranteed and, third, the mechanisms for acquisition of property are to be defined in the Civil Code. Fourth, expropriation of property for public needs is permitted only with fair compensation. These constitutional provisions offer significant protections of the rights of property, but the full content of the rights must be determined within the wider context of civil law.

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<sup>18</sup> See, for example, Harold Lemel (1996), *Study of Vaqaar Communa*, Terra Institute for the Albania Land Markets project (USAID).

<sup>19</sup> See Fioreta Luli and Valentina Sulioti (1995), *The Illegal Conversion of Agricultural land at the Urban Fringe in Albania*, survey of land occupants in three districts, report prepared for the Albania Land Markets project (USAID). Also see Herman Felstehausen (2002), *Informal Economy Construction Boom in Tirana*, University of Wisconsin Land Tenure Center, paper prepared for the Albania Land Markets project (USAID).

<sup>20</sup> See Rachel Wheeler (1998) *Past and Present Land Tenure Systems in Albania: Patrimonial, Patriarchal and Family-Centered*, University of Wisconsin Land Tenure Center Working Paper no. 13.

<sup>21</sup> See Norman Singer (1999), *The Process of Urban First registration and Other Issues in Albania*, Terra Institute, report prepared for the Albania Land Markets project (USAID). The vertitim e faktit, a court order recognizing the factual possession of land, has been rendered invalid after adoption of the Civil Code in July 1994.

<sup>22</sup> See Carletto Calogero, Benjamin Davis, Marco Stampini and Alberto Zezza (2004), *Internal Mobility and International Migration in Albania*, United Nations Food and Agriculture Organization, ESA Working Paper no. 04-13, [www.fao.org](http://www.fao.org).

<sup>23</sup> See Project Management Unit of the Ministry of Agriculture and Food (1999) *Land Use Study in a Peri-Urban Area of Tirana*; and Haxhi Aliko and Romeo Sherko, *On Regularization of Informal Settlements in Albania*, publications of the University of Wisconsin, Land Reform Center.

The Civil Code of 1994 offers the basic definitions, which indicate how certain elements of property rights are to be applied. Most important, Article 149 of the Civil Code gives the meaning of the term “ownership” (pronësia), as follows:

Ownership is the right to enjoy and dispose of objects freely, within the provisions of the law.

To understand its meaning, it is helpful to compare this definition with the traditional civil codes of Western Europe. For example, the French Civil Code, Article 544, defines “ownership” (propriété) in the following way:

La propriété est le droit de jouir et disposer des choses de la manière la plus absolue, pourvue qu'on n'en fasse pas un usage prohibé par les lois ou par les règlements. (Ownership is the right to enjoy and dispose of the object in the most absolute manner, except that one cannot make use [of the object in ways] prohibited by laws or regulations.)

There are two significant phrases at issue in the comparison. In the French version, the rights to enjoy and dispose of the object can be exercised “in the most absolute manner.” In the Albanian version they are exercised “freely” but within the provisions of the law. In the French version, an exception is stated that aspects of the “use” of the property can be prohibited by laws or regulations. In the Albanian version the provisions of the law can define all aspects of possession, use and disposition. These differences reflect the fact that the French concept of ownership has evolved from principles of the 18<sup>th</sup> Century Enlightenment, in which property is recognized as a human right inherent in the status of the person as an individual. The Albanian version lacks this concept of human rights and views the elements of ownership as rights that a person gains by action of law. Thus it is the state, by creating the laws, which defines the content and can limit all aspects of the relation of the person to the object.

These conceptual differences have practical results. In France, by use of the term “absolute,” an owner is understood to possess all elements of rights, even those, which new technologies make possible but the law has yet to define. In any case in which there is a dispute over whether the owner possesses a right, reference is made to other laws to determine whether the state has enacted a regulatory limitation in order to protect public health or safety or the environment. If no limitation is found, the owner cannot be restricted from exercising the right. In Albania, the resolution of a dispute gives rise to a different analysis. Other laws are consulted to determine if the owner is entitled to claim the right -- that is, whether the law includes the disputed elements as part of the content of ownership for the type of property at issue. Further it must be determined whether the state has granted, withheld or restricted these elements for the specific immovable object, at the time when it first granted ownership and classified the object. If either the broad eligibility or the specific categorical grant cannot be found, then the owner is not authorized to exercise the right.

**Chart 4-1.**

**Extract from Chart 1-1: Status of Land and Property Holdings by Category, 2005**

<b>Category of Properties</b>	<b>Est. Number of Units</b>	<b>Comments</b>
Total Units of all Types	4,500,000	
<b>Rural properties</b>	3,300,000	579,000 hectares
Agricultural fields	1,900,000	568,000 hectares given to 420,000 households under Law no. 7501
-- cooperative farms	1,500,000	439,139 hectares to 353,718 families
-- state farms	300,000	123,334 hectares to 91,000 families
-- refused land		110,000 hectares
-- state owned agricultural	23,667	26,786 hectares former state farm land
Village plots and houses	400,000	Owned prior to 1990 as "personal property"
Forest, pasture and protected lands	1,000,000	Subject to inventory and division with communes
-- private owned forest		6,314 hectares in restitution
-- private owned pasture		23,600 hectares in restitution
-- communal forest		283,800 hectares
-- communal pasture		244,200 hectares
-- state forest		760,200 hectares
--state pasture		160,000 hectares
<b>Urban properties</b>	900,000	
-- Apartments	205,000	Privatized to citizens by Law no. 7652
-- Dwelling units (built before 1990)	237,700	Privatized to citizens by Law no. 7652
-- Individual houses (built before 1990)		Owned prior to 1990 as "personal property"
-- New legal dwelling units (1991-2004)	45,000	Built with permits
-- Non-housing premises		Privatized by Law no. 7512
-- State/municipal	180,000	Subject to inventory
<b>Illegal properties</b>	90,000*	Built or subdivided without permits or land rights
<b>Property Claims by Former Owners</b>	42,000	30,000 claims decided; 12,000 claims pending

*Source:* author's compilation (See Appendix 1 for references)

\* The figure for illegal properties is the number given by the State Agency for Legalization and is an estimate of the number of properties within the "informal" peri-urban zones that may legalize under the law of October 2004. It does not include illegal buildings in rural and coastal tourism areas.

## Appendix 5. The Immovable Property Registration System

### Organizing the IPRS

In 1991 and 1992, in the original programs of transfer of land, buildings and housing units, the legal documents, giving evidence of private ownership, were placed in separate archives. The "tapis," recording family ownership of agricultural plots, and documents related to village houses, were kept in the rural land administration (cadastre) offices. Documents related to urban housing and commercial properties were registered in the hypotek offices, which had been revived on the pre-1945 model. Subsequently, when the restitution committees began issuing documents, recognizing the rights of former owners, copies were held both in the restitution committee archives and could be registered in the rural cadastre or urban hypotek, as appropriate. Neither the hypotek nor the rural cadastre records were linked to a geographic location system and neither archive was defined with the civil law powers to issue a legally guaranteed proof of rights. In 1993, in conjunction with the drafting of a revised Civil Code, the government authorized the creation of a modern, European style land and property rights registry.

The Council of Ministers adopted an Action Plan, which was prepared with technical assistance from USAID and the European Community/PHARE. The Action Plan anticipated the creation of the Immovable Property Registration System (IPRS).<sup>1</sup> The IPRS would eventually unify all the archives; maintain a single format for keeping the data on ownership and subordinate rights; link all data to accurate location maps and surveys; and issue a standard Certificate of Ownership (or of subordinate rights) as the guaranteed evidentiary document. The IPRS would enable the use of standard methods of civil law transactions in land and immovable property units -- purchase/sale, lease, servitude, mortgage, exchange, etc. -- and would provide the guarantee of protection of rights through the unbroken "chain" of registered transactions. The fundamental principles of mandatory registration of all rights and transactions were written into the Civil Code of 1994, and the purposes, structure and authority of the IPRS were elaborated in a separate law, *On the Immovable Property Registration System*.<sup>2</sup>

The Albanian government began the organization of the IPRS in 1994, setting up 36 district offices in the major cities and regional administrative centers. Each office encompassed a group of "cadastre zones" in which all land parcels and other separately defined immovable objects (buildings, structures and premises) were to be registered. There were a total of 3,058 cadastre zones in the country, of which 139 were urban and 2,919 were rural and mountain zones. USAID and PHARE funded the Land Market Assistance Project, which had three components. Assistance was given to the management and staff of the new IPRS in organizing its operating and management procedures, drafting its regulations and technical standards, and setting up its offices. With the Project Management Unit of the Ministry of Agriculture and Food, the process of "first registration" was undertaken with separate components of mapping and surveying (assisted by PHARE) and preparation of legal documentation (assisted by USAID).<sup>3</sup>

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<sup>1</sup> Decision of the Council of Ministers no. 505 of 26 October 1993, "On Approval of the Action Plan of the Immovable Property Registry System and the Programs Related to the Future Market of Immovable Property."

<sup>2</sup> Civil Code, Articles 192-197; law no. 7843 of 13 July 1994, *On the Immovable Property Registry System*.

<sup>3</sup> See Ahmet Jazoj, David Stanfield and Teresa Barry (1997) *Albanian Land Market Action Plan: Purposes, Achievements, Lessons*, University of Wisconsin Land Tenure Center Working Paper no. 1. See also

## First registration

There are two processes by which properties enter the IPRS: (1) systematic first registration, in which all properties in a given cadastre zone are surveyed and their legal documentation is fixed and (2) sporadic first registration, in which single properties are entered without survey. Sporadic registration has been an interim action, pending the systematic first registration of the given zone.

In concept, the Albanian IPRS has been designed as a typical European registry, which can evolve into a multi-purpose cadastre. The data about each land parcel or separately owned property unit is noted on a registry page (called the "kartela") and the kartelas are bound together into Registry Volumes, with each page having a unique code number. An accurate map of the cadastre zone is made with the properties noted by their code numbers, so that the data can be clearly linked to the location. In systematic first registration, the kartelas, volumes and maps are prepared both in paper and automated forms.<sup>4</sup>

When a given zone is completed by systematic first registration, then all inquiries by citizens, entities, government administrative units and courts about the status of ownership or subordinate rights and obligations are to be answered by reference to the specific registry page. The registry page contains all the legally significant information -- precise location, precise size and boundaries, ownership, subordinate rights, legal restrictions or limitations, and cross-reference to the archived transaction documents.<sup>5</sup> Only registered rights, obligations or transactions can be given significance and protected by the courts. Failure to register an action (creating or changing a property or transferring rights to it) renders that action a nullity, with no protection. These essential principles appear in both the *Civil Code of 1994* and in the law *On the Immovable Property Registry System*<sup>6</sup>

## Five stage procedure of the first registration

There are two processes by which properties enter the IPRS: (1) systematic first registration, in which all properties in a given cadastre zone are surveyed and their legal documentation is fixed and (2) sporadic first registration, in which single properties are entered without survey. Sporadic registration has been an interim action, pending the systematic first registration of the given zone.

Systematic first registration involves a five stage procedure, which has also been carried out in the USAID assisted project (2003-2004) by sub-contracted surveyors and legal experts in the following way:<sup>7</sup>

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Romeo Sherko (1997) *An Insider's View on Establishing an Immovable Property Registration System in Albania*, University of Wisconsin Land Tenure Center Working Paper no. 5.

<sup>4</sup> See Romeo Sherko and David Stanfield, (2000) *Adapting Information Technology for Land Market Institutional Development with reference to Albania*, paper presented at the Association of American Geographers, Annual Meeting April 2000.

<sup>5</sup> Order of the Immovable Property Registration System no. 184 of 8 April 1999, *Regulations for the Work of Immovable Property Registration Offices*.

<sup>6</sup> *Civil Code of 1994*, Articles 193-194, Law no. 7843 of 13 July 1994, *On the Immovable Property Registry System*, Articles 9, 11, 28.

<sup>7</sup> See Order of the IPRS no. 450 of 31 August 1999, *On First Registration in Urban Zones*.

- (1) The subcontractor receives, assembles and cross-checks the source documents from the rural cadastre, hypotek or other pertinent state archives. The documents include (among others) the records of the housing privatization committees, the committees on the restitution of pre-1940 property rights, the commercial/industrial privatization committees, and the farmland distribution committees.
- (2) Teams are sent into the field to measure and map the conditions of all the properties in the cadastre zone. In the systematic first registration activity in 2003-2004, mediators from the Albanian Foundation for Conflict Resolution have gone into the field first, to explain the process to local residents and seek their cooperation. The mediators encourage the property owners to assemble their property documents and be ready for the visit by the surveyors. Subsequently, the surveyors come to measure and describe the patterns of land occupancy, use and development in the zone, and to receive from citizens copies of their pertinent documentation. By cross-referencing the field surveys, official documents and citizen documents, discrepancies among them are worked out and accurate information, describing the size and location of units, is prepared for the registry maps. The technical instructions of the IPRS provide the standards, which are applied to resolve questions of size and location of boundary lines, when the documents are unclear and gaps or overlaps occur.<sup>8</sup>
- (3) The legal experts cross-reference the documents from official archives and from the citizens, in order to clarify the ownership and any subordinate rights, restrictions or limitations of each property. This task requires the assemblage of any "chain" of transactions, starting from the initial act of privatization or restitution through subsequent inheritance, sales or other transfers of rights. In cases in which the originating documentation is not clear, documents are missing in the chain, or the documentation shows two or more persons holding documents to the same property, the kartela is noted with a "restriction." The restriction prohibits the registration of any subsequent transactions on the kartela unless there is also presented further documentation (a court order or buy out of the conflicting rights) solving the problem.
- (4) When the materials has been prepared in draft form for all the properties in the cadastre zone, the draft Registry Index Maps and lists of all property owners are displayed in a public space in the cadastre zone for 90 days. Citizens and representatives of juridical persons and agencies come to check the listings of their properties and bring to the attention of the surveyors and legal experts or the IPRS any errors or disputed claims. Most technical errors can be corrected and problems arising from disputed claims to property or disputes over boundaries can be mediated by the Albanian Foundation for Conflict Resolution. Some legal problems -- such as missing documentation creating a broken "chain"-- cannot be resolved and must be referred to the courts or administrative agencies with pertinent "restrictions" noted on the kartelas.
- (5) After the close of the public display, the final corrections are made, the kartelas and maps are printed (and prepared in digital form), the kartelas are bound into Registry Volumes and the District Registrar accepts and signs. On the date when the Registrar signs his/her acceptance, the IPRS becomes the legal source of property rights data for the zone, serving the courts, administrative agencies, notaries and all persons carrying out real property transactions.

### **Numbers of properties subject to registration**

Between 1994 and 2001, the first program of systematic first registration placed in the registry almost 2 million farm and village properties in 2,263 rural cadastre zones. Approximately 120,000 apartment units were entered in the urban zones, without mapping and pending later first registration. The European Union and USAID provided support for the work,

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<sup>8</sup> Order of the IPRS no. 176 of 13 September 1999, *Technical Instructions for Filling in the Immovable Property Kartela*

which was organized and managed by the Project Management Unit of the Ministry of Agriculture and Food. The project ended in 2001 after financial and operational audits revealed a number of operational problems and significant errors in the registry data.<sup>9</sup> A fundamental problem in the first project was the bifurcation of the map and survey work from the legal work (with separate subcontractors) leading to frequent mismatches between the data sets.<sup>10</sup>

Systematic first registration continued under another project, called Registry Organizational Improvement (ROI), funded by USAID from 2002 until 2004. During this period an additional 62 rural cadastre zones (considered to be economic priority zones with tourism or industrial potential) and the first 16 urban zones were completed. This project re-organized the work procedures, using a "global contracting" methodology by which one sub-contracted firm (with both land surveyors and legal experts) was awarded the tender to carry out systematic first registration in each zone. The sub-contracts were issued directly under the IPRS without the PMU. Also during 2003-2004, the Project Management Unit continued work on 58 additional zones, unfinished from the previous project. In November 2004, another 70,000 properties had been added to the rural zones and 88,000 properties in the urban zones.

**Chart 5-1. Status of Property Registration, December 2004**

Source: ROI project (USAID)

Category	Number of Properties	Number of Zones	Project Notation
<b>Properties entered into IPRS by December 2004</b>			
Rural (2001)	2,013,000	2 263	USAID/EU/PMU
Apartments (sporadic 2001)	168,000		USAID/EU/PMU
Rural economic priority (2004)	70,900	62	USAID
Urban (2004)	88,600	16	USAID
Apartment updates (2004)	12,000		USAID
Rural unfinished (2004)	52,200	58	IPRS/PMU
<b>Properties in progress in 2005</b>			
Korce/Maliq	15,000	4	EU
Vlora			OSCE
<b>Remaining unfinished</b>			
Rural zones	400,000	531	

<sup>9</sup> Ernst and Young Albania, *Management and Financial Audit of the First Registration Project Management Unit on Funds Provided by USAID*, 14 January 2002; KPGM Albania, *Review of the 14 January 2002 Auditor's Report Management and Financial Audit of the PMU*, 29 March 2002; Deloitte and Touche, *Management and Financial Reports of the European Union Support to the Project Management Unit for the Immovable Property Registration System*, no. AL98/05/01, 3 June 2002.

<sup>10</sup> See Richard Gaynor and David Bledsoe (2000) *Evaluation of the Albania Land Market Development Cooperative Agreement*, final project evaluation report prepared by ARD, Inc., for USAID.

State owned forest/pasture in zones previously registered	600,000	2,685	
Village centers (in previously registered rural zones)	10,000	40	
Urban	750,000	134	

## **Appendix 6. Analysis of the outcome of first registration in urban and rural zones**

### **Method of analysis**

In order to determine how the outcomes of systematic first registration will influence the development of market activity, the Registration Organizational Improvement (ROI) project in 2004 carried out an analysis of the data on property ownership in the 16 urban zones and 62 rural zones, which it completed. This analysis organized the information for each cadastre zone, contained on the kartelas, into a series of categories, describing the properties by physical and legal characteristics, as follows:

- The number of units in the ownership of citizens, juridical persons and the state;
- The number of units in groupings by physical characteristics (apartments, land parcels, buildings, streets);
- The number of units without legal restrictions;
- The number of units with problems of legal documentation, including illegal construction.

From these statistics, analyses can be made about the present strength and sufficiency of immovable property rights in zones with different characteristics -- central city and city periphery zones, coastal rural zones with tourism potential, agricultural zones and mountain zones. Some predictions can also be made about the ways in which future transactions will take place, in particular, the likelihood of direct civil law and market transactions, rather than other forms of administrative, informal and customary practices will continue to prevail.

Several assumptions underlie the methods of analysis. First, a high level of state ownership can mean that, in a zone, the processes of land distribution, privatization and restitution are incomplete because the rules for first registration require the "state" to be marked as owner in any case in which the documentation of private ownership is not complete. Second, a high level of state ownership can also mean that subsequent transactions are more likely to involve the state/municipality as an ownership party. In such cases, the dealings are not direct civil law and market transactions. They involve administrative law actions, pricing or setting the rent using the prescribed methods of "objective" valuation, and other political and bureaucratic relationships that distort transactions. Third, a low level of ownership by juridical persons signifies that land and property dealings will have the character of personal and family relationships, rather than business dealings in which economic factors are dominant. Customary methods are likely to prevail over civil law and market transactions. Fourth, a significant number of "restricted" properties shows incomplete development of the registry and a likely source of future transactions, which will take place outside the civil law. Fifth, the record of illegal buildings shows another component of non-civil law transactions.

In theory, the notations in the registry of "restrictions" and "illegal building" status provide the incentive for owners to take the necessary actions to "clear" their title. An owner, whose property is marked with a restriction, is prohibited from engaging in and registering a subsequent civil law transfer of rights without first taking the necessary actions to "clear" the title. In theory, the restriction is a strong incentive for owners to achieve compliance. In reality, however, most restricted property holders ignore the registry and engage in informal transactions in order to avoid the costs of compliance. A parallel system of informal transactions develops, undermining the registry and weakening the market and the system of civil law. It is within this framework of analysis that the categorical data shows significant problems.

## The outcome of urban first registration

In the 16 urban cadastre zones, 88,140 property units have been registered in 2003-2004. The categories of these property units are shown in the following chart. It must be noted that the chart is a compilation of the separate zone reports, which were not consistently organized; therefore, overlaps and gaps occur in the aggregate figures.

**Chart 6-1. Outcome of Registration in 16 Urban Cadastre Zones, 2004**

Source: ROI Project (USAID)

Category	Number of units	Percent of total units
Total	88 140	100.0%
<b>By Ownership</b>		
Private ownership	65 015	73.8%
-- by juridical person	6 493	7.4%
State ownership	16 721	19.0%
Unverified owners*	10 902	12.4%
<b>By Physical Characteristics</b>		
Apartments	37 607	42.7%
Land parcels (truall)	34 680	39.3%
Lands with buildings	12 168	13.8%
Streets	2 865	3.3%
<b>By legal restriction</b>		
Units without restriction	75 039	85.1%
-- private ownership	34 680	68.4%
-- state ownership	14 827	16.8%
<b>By legal documentation</b>		
Pre-1991 grants	7 167	08.1%
Separate building/land owners	2 123	02.4%
-- state land/private building	1 359	
-- private/private	670	
Land occupied by third party	4 565	05.2%
-- state owned land	4 364	
Illegal building	17 994	20.4%

\*Note: In the subcategory of unverified owners, some subcontractors considered these to be part of the state ownership category (thus, double-counting), while others made them a separate category. This reflected disagreement about the technical instruction of how to identify properties, which had an obvious private occupant/possessor, but the "chain" of ownership documentation was not complete.

## The level of state ownership of urban properties

In the chart, the overall balance of privately-owned to state-owned properties -- 73 percent private, 27 percent state -- appears to make possible a lively market and correspondingly strong civil law transactions and protections. However, when the focus is shifted to specific physical categories, a different picture emerges. A high proportion of the urban properties are separately owned apartment units, which as a result of housing privatization, are almost totally under private ownership. Thus, state ownership is concentrated in the categories of land and buildings. The state properties fall into two subcategories: public use lands and buildings (including streets) and properties that can be used for productive purposes -- agriculture, industry

and trade or the development of new housing. In particular, this category includes land that can be developed with new urban construction (called "traull"). The state holds many "traull" parcels, which have not been transferred to citizens or juridical persons in ownership, or which have been registered in state ownership by default because the documentation of private ownership is faulty. If the apartments (all private) are subtracted from the total numbers of properties along with the streets (all public), then the balance of state and private properties can be viewed for the categories of land and buildings. The resulting numbers are 47,768 total properties and 13,856 state-owned properties, or a balance of 29 percent state properties. An even more refined analysis can be made by considering the properties with separate land/building ownership and land parcels with non-legal occupancy (in the category of properties with legal documentary problems). In both subcategories the significantly larger number of problem properties are state-owned. If this situation is assumed to be the general pattern, then state ownership is shown to fall heavily within the subcategory of land parcels without buildings. With that assumption, the comparison is between the state ownership of some 16,000 properties and the total of land parcels (traull) of 34,000. This would suggest that the state has retained ownership of 40 percent or more of the land, available for development in the cities. Reference to the maps confirms this fact and illustrates that, in many zones, the state holdings by hectares, constitute the majority of the land.<sup>1</sup>

The significance of this finding is that the state or municipal administration is likely to be a "partner" in any development, which requires the consolidation of land parcels to create a building site. It is known from other sources that this is the case and the effects on market activity can be recognized. In the large cities of Albania, there are lively markets for apartments and small houses with widely available listings and advertisements. Rents and prices are generally known and tracked by real property analysts.<sup>2</sup> By contrast non-housing transactions are opaque and those associated with large scale office, industrial and commercial development give rise to gossip and speculation about the economic terms, the identity of the parties and their links to government and political figures.

### **The number of restricted urban properties**

The data on restrictions, overall, is given in negative terms -- that is, the categories record the numbers of properties registered without restrictions. In total 85.1 percent of all property units are shown as unrestricted and private unrestricted properties are shown at 68.4 percent of total property units. A more meaningful comparison shows the total number of private, unrestricted properties -- 60,323 -- beside the total number of private properties -- 65,015. The difference of 4,682 defines the private properties, which are restricted. A similar calculation of the state property numbers shows 1,894 restricted state-owned properties.

Once again, a more refined analysis can be done by removing from the totals the apartments and streets. Restrictions are not placed on either of these subcategories because of the nature of the documentary problems and illegalities that give rise to restrictions. In relation to the smaller total numbers of land parcels and parcels with buildings, the restricted properties are more significant -- almost ten percent of the 47,000 private land and building units and more than ten percent of the state-owned properties (without streets).

### **The number of illegal buildings and other problem properties**

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<sup>1</sup> The Land Use Study of Vlora, done in 1999 by the Project Management Unit and the University of Wisconsin found that the state had ownership of 14 percent of the properties, but these encompassed 47 percent of the land area.

<sup>2</sup> See, for example, Gazeta Shqiptare, 25 May 2004, at pg. 6.

In the category of properties with legal problems, the key subcategories are the lands occupied by third parties and the illegal buildings. Lands occupied by third parties encompass three different situations: (1) a family in possession without proper documentation of a separately-registered legal building; (2) an illegal building standing on a single plot that is registered; or (3) a building standing with other buildings on a large un-subdivided tract. The subcategory of illegal buildings includes (a) buildings occupied by third parties (overlapping with the other sub-category); and (b) buildings on legally owned and registered land but constructed or altered in violation of planning laws. Thus, some of 4,565 properties occupied by unauthorized third parties are double counted in the illegal building category with 17,994 properties, and some properties from both categories are double counted in the restricted category. Even with the gaps and overlaps, the numbers are significant. Unauthorized third parties occupy 4,364 property units owned by the state. For the most part, these are land parcels on the periphery of the cities where migrating rural families have built houses. They constitute more than 25 percent of the total of state urban properties and they are 12 percent of all land parcels with development potential (truall). The number of illegal buildings, 17,994, is 36 percent of the total number of land parcels and separately-registered buildings (without streets and apartments). Although some large, undivided land tracts contain multiple illegal buildings, the percentage of land parcels with illegal buildings probably is over 30 percent.

### **Conclusions drawn from the numbers of urban properties**

The numbers, overall, show that in the Albanian cities the development of open and competitive land markets and a strong system of direct civil law dealings faces many obstacles. The combination of restrictions, illegal buildings, unauthorized occupancies and retained state ownership, leaves a low final number of unrestricted, privately-owned and legally developed land parcels, probably less than half the 34,600 land parcels (truall) and substantially less than half the 27,400 privately owned properties excluding apartments.

The numbers within specific urban cadastre zones are more striking and they reflect the concentration of problems of tenure and illegality in the districts on the periphery of cities. A few examples are the following:

- In cadastre zone no. 8512 on the periphery of Durres, out of 8,634 properties, there are 2,718 illegal buildings (31.5 percent) and 1,871 properties occupied by people other than the owners (21.7 percent). Properties registered without restrictions constitute only 65.8 percent of the total. If apartments and streets are removed, leaving a total of 5,335 land parcels and buildings, then the resulting restricted and illegal properties are recognized to be the majority.
- By contrast in zone no. 8562, which is a central residential zone of Korce, there are only 129 illegal buildings. The major problem in this zone involves houses built before 1945, for which the present owners do not have documentation. Some of these properties have been noted in state ownership -- 465 or 6.9 percent of the total. Others fall under the restricted category.
- Another zone with a highly distorted pattern of ownership is zone no. 8604 on the periphery of Vlora. This zone encompasses the area designated as the Vlora Industrial Development Park. Much of this zone was formerly occupied by large state industrial enterprises and forest land. It has a total of 1,172 properties of which only 269 are registered in private ownership by citizens/families and only one property is in the ownership of a juridical person. Of the 912 state owned properties, 430 are occupied by people without authorization and there are 213 illegal buildings.

Any investor, who comes forward to build in this industrial park will have the state as an equity partner in the deal and will have to bear the costs, delays and difficulties of removing citizen occupants from the land.

The results of the 2004 analysis appear to confirm the urban land study, carried out in 1999 by the consultants of the University of Wisconsin, in the first USAID-sponsored registration project. That study was based on a survey of property owners, taken by visits to homes, businesses and other interviews in a sample of urban blocks in three cities -- Tirana, Durres and Vlora.<sup>3</sup> It reached the following conclusions:

- Of houses and villas, 87.8 percent were privately owned;
- Urban land with buildings, 62.4 percent privately owned;
- Land used for commercial purposes, 46.5 percent privately owned;
- Land in mixed ownership (joint ventures with state/private parties), 13.8 percent;
- Vacant urban land, 21.9 percent privately owned.<sup>4</sup>

The data provide evidence of the concept of a controlled market that lies in the fundamental land legislation and land policy of Albania. The market is intended to operate freely, with direct relations between citizens or enterprises, for those properties for which the use is fixed -- either land in agricultural designation or urban land, which is developed. Land, which is vacant or which is likely to be subject to transformation of its use is made subject to state control. The state is to act not only as the land use regulator but also as the holder of substantial property rights, either full ownership or a joint or dual ownership. In this way, the state insures its ability to be the controlling party at the negotiating table, when the decisions are made about the use of the land for productive purposes. Even if the initiative is generated by private parties, responding to market forces, the private parties cannot realize their intentions without "buying" in the state. In most cases the state's actions are designed either to insure that a maximum portion of the economic value gain of the property is kept for the state or is steered to particular parties favored by the state.

### **The outcome of first registration in rural zones**

For the rural zones, the Registration Organizational Improvement project carried out a less thorough categorization of the data, however, some insight can be gained from the overall data and from a few reports on specific villages.

The compilation of rural data has been made for 48 of the rural zones, completed in 2004. This compilation has fewer categories than the urban zones. In particular, no distinction has been made between private and state ownership of agricultural properties. Instead, the properties are categorized as "rural" and "urban" (within the yellow line of a village). Properties are also categorized as "restricted" properties, legal buildings and illegal buildings.

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<sup>3</sup> See Margaret Moores, Lhukan Puka, Fioreta Luli, Malcolm Childress and Dritan Caro (1998), *Emerging Uses of the Urban Landscape in Tirana*, paper presented at the Joint International Conference of European Real Estate Society and the American Real Estate and Urban Economic Association, Maastrich, 10-13 June, 1998. See Fioreta Luli (1999), *Land Use Study of the Peri-Urban Zones of Durres*, report prepared for the Project Management Unit and the Land Tenure Center of University of Wisconsin.

<sup>4</sup> Kelm, Katherine (2002) Case Study Albania, for Regional Workshop on Land Issues in Central and Eastern Europe, Budapest, April 3-6, 2002 at pg. 12.

**Chart 6-2. Categories of Properties Registered in 44 cadastral zones of Rural Districts, 2004**

Source: ROI Project (USAID)

Total units	Rural/state	Urban	Restricted	Legal buildings	Illegal buildings
58 754	55 817	2 937	2 350	4 635	1 436

The urban properties are a small proportion of the total (5 percent) because they do not include the larger villages, which have their own, separate cadastre zones. Restricted properties constitute 4 percent of the total and illegal buildings constitute only 2 percent of the total properties. However, the restricted properties and illegal buildings tend to be concentrated in a few zones. In particular, they occur in the coastal villages of the Saranda district. For example, in the cadastre zone of Shen Vasil (without a village center) there are 285 illegal buildings and only one legal. Similarly in the rural zone of Piqeras there are 338 illegal buildings and only 35 legal. Other concentrations of illegal buildings are found in two zones (out of 11 zones) in the Lezhe district, in two zones of Gjirokaster and in Vadardhe (a peri-urban zone) in Durres district.

**Chart 6-3. Categories of Properties Registered in 44 cadastral zones of Rural Districts, 2004**

Source: ROI project (USAID).

District (number of rural cadastre zones)	Total Properties	Rural and State	Urban	Restriction or Transact.	Legal Buildings	Illegal Buildings
Delvin (three)	4,990	4,977	13	15	88	69
Diber (six)	3,514	3,311	202	0	436	0
Durres (one)	1,591	1,591	0	0	131	151
Fier (one)	863	863	0	0	97	0
Gjirokaster (two)	3,516	2,958	122	3	133	103
Kurbin (one)	2,416	2,266	150	0	519	169
Lezhe (eleven)	9,443	8,721	730	131	1,056	63
Puke (three)	4,156	4,110	16	775	0	0
Saranda (eleven)	22,418	20,735	1,684	86	1,413	896
Shkodre (five)	2,748	2,729	19	34	312	27
<b>TOTAL</b>	<b>55,655</b>	<b>52,261</b>	<b>2,936</b>	<b>1,041</b>	<b>4,185</b>	<b>1,478</b>

In the rural zones, properties classified as rural or state owned constitute 94 percent of all properties registered. The urban properties are, for the most part, houses in village settlements. They include a small number of other industrial, commercial and infrastructure facilities. The aggregate number of properties, for which a restriction or transaction has been registered, is quite small -- two percent. This category involves any changes in property ownership, leasehold, and or other subordinate rights or limitations imposed on the property during almost ten years since the original "privatization." The aggregation of data about transactions in certain districts is also significant, and it reflects concentration of these numbers in only a few cadastre zones. For example, in the Lezhe District the 131 transactions occur only in three of the 11 zones and they are zones in the coastal, tourism area.

The ratio of illegal buildings to legal buildings is significant, 1,478 illegal buildings are recorded out of a total of 5,663 buildings -- 26 percent. The pattern of location of illegal buildings is more widespread than the pattern of restrictions and transactions; however, there is a strong correlation between the village, in which transactions have occurred and the villages in which illegal buildings are located. Again, in the 11 zones of Lezhe, all of the 63 illegal buildings are found in two of the three villages where transactions/restrictions have been noted. Similarly, in Delvin, the 54 of the 69 illegal buildings are in the one village where the 15 transactions/restrictions are found. In the Saranda district, the concentrations of illegal buildings

and transactions/restrictions occur in four of the 11 zones. Only in the Puke district were there a high number of transactions/restrictions without a corresponding concentration of illegal buildings. The explanation for the correlation appears to be that illegal construction is a symptom of economic opportunity in coastal/tourism areas and on the periphery of cities -- the same areas where legal transactions and squatting on land without permits (giving rise to restrictions) also is taking place.

Restricted properties are also concentrated in a few zones, some of which overlap the zones with illegal buildings, others of which are different. Surprisingly, more than 75 percent of the restricted transactions occur in three zones in the Puke district (1,851 properties) where there were recorded no illegal buildings. A special inquiry was made to determine the situation in these three rural areas. The explanation given is that these properties include poor quality agricultural parcels, which citizens have refused to accept as well as a number of properties, formerly under the control of industrial and mining companies, where citizens are now in occupancy.

## **Appendix 7. Use of the Immovable Property and Hypotek Registries of Albania**

### **Introduction**

A direct indicator of the numbers and types of land and immovable property transactions, taking place in Albania are the statistics, recording the use the Immovable Property Registry System and the hypotek. The purpose of IPRS is to maintain and provide the legally significant data about ownership and other rights in land, buildings and premises and output this information as Certificates and verifications, enabling persons to prove their rights, carry out transactions and resolve disputes.

Since 2000, the IPRS has assembled the statistics about applications made to the registry offices by citizens and representatives of juridical persons and state agencies. This data provides the basis for measuring operational performance, calculating the receipts from fees, and planning for future needs. The same data can be studied to assess the growth or decline of applications from year to year and measure the trends of public and professional confidence in the registries. For this analysis, it is helpful to clarify the two ways in which the registry is used. (1) Some applicants come to draw out information in order to prove existing rights or restrictions on property units. (2) Other applicants bring in information about changes in rights or restrictions in order to protect their newly created legal status.

In the output category, the Civil Code and the Law no. 7843 *On the Immovable Property Registry* authorize the IPRS to issue a “certificate of ownership” for a property unit upon request by the owner. The registry can also issue certificates of leases, mortgages and servitudes to the holders of these rights. Any other person can ask the registry to issue a certified copy of a document, kept in the archives, or an extract of a map, showing a property unit.

In the input category, the Civil Code and Law no. 7843 require the party, who receives new rights in a transaction or changes the characteristics of a property unit, to register the new legal documents. If the person fails to do so, the system cannot supply legal evidence of the new rights and the law prohibits this person from engaging in subsequent transactions, based on the unregistered rights. The mandatory “updating “ of the registry data is essential to keep an unbroken “chain” of registered rights as the basis of the proof of ownership and other rights.

Based on these legal requirements, the IPRS can be seen to function properly when citizens and the representatives of juridical persons and state agencies are taking out certificates prior to engaging in transactions or deciding disputed claims, and are bringing in the new documents after their transaction or decisions. High numbers of users would indicate that the public understands the importance of registration and the need to follow the civil law procedures in order to protect their rights. High numbers would also indicate that the lawyers, brokers, notaries, who deal with real property, are making registration a routine part of their professional services. Low numbers would indicate that people do not understand the importance of registration and are avoiding the civil law procedures in favor of “informal” property relations.

### **Description of the Database**

The user data has been presented in two components: (1) applications made to the new registry – IPRS – and (2) applications made to the hypotek – the urban archive, which is being

replaced by the IPRS. Before August 2004, the IPRS contained only data on the rural properties, which had undergone First Registration, and on apartment units in some urban zones. The hypotek contained all the data on other urban properties – land parcels, buildings and separately owned apartments and business premises. During First Registration in 2004, about 100,000 properties in 16 urban zones have been prepared for transfer from the hypotek into the IPRS. Another 100,000 rural properties also have been processed for entry into the IPRS. During the period, ending in August 2004, the total database has contained the following:

IPRS rural data	2.1 million properties
IPRS apartment data	0.2 million properties
Hypotek	0.9 million properties (urban)

The data appears in four annual compilations for 2000-2003 plus January to August 2004. Each compilation is a matrix showing the number of applications received in the 36 district registry offices for 23 categories of applications. There are two matrix charts for each year, one for the IPRS and one for the hypotek.

### **Method of Analysis**

With the structure of the databases as described above, the matrix charts allow four levels of data to be compiled and analyzed for each year:

- Total numbers of applications made nationally;
- Numbers of applications made in each category nationally;
- Numbers of applications made for all categories in each district;
- Categorical numbers of applications in each district.

Four methods of analysis are then applied to these numbers:

- Trend analysis (year-to-year growth or decline);
- Internal system comparative analysis (IPRS use compared to hypotek use);
- International comparative analysis (with registries in other countries);
- Categorical analysis (relation of registry data with other social and economic data for the category)

For the trend analysis, success would be shown by a steady growth in use of the registry, year to year. For the internal comparative analysis, use of the IPRS should be growing which use of the hypotek declines, as properties transfer out of the hypotek. For the international comparative analysis, there should be a rough match between the combined use of the Albanian IPRS and hypotek and the use of registries in foreign states with similar systems. For the categorical analysis, success would appear by levels of growth or decline in the applications, roughly matching other relevant factors affecting the category. For example, the category of applications to change ownership based on inheritance should roughly reflect the national death rate.

### **Analysis of the Nationwide Use of the IPRS and Hypotek**

- **The trend in use of the registries nationwide and the comparison between them**

Prior to 2000, over 2 million rural properties and about 0.2 million apartment units were entered into the IPRS, while approximately 0.8 million urban properties were in the hypotek. The expected trends in change in this data would be expected to follow trends known from other social and economic studies. After the period of disruption in 1997-1998, most economic sectors in Albania stabilized and growth was recorded in certain sectors. In particular, large numbers of

houses and other urban facilities were constructed. Large numbers of property transactions (legal and illegal) have taken place and large numbers of property disputes were in the courts. Thus, for the years 2000-2004, there would be expected steady growth in use of the registries both for “output” documents (to prove and verify rights) and for “input” of transactions and changes. The numbers show the expected pattern of growth:

**Chart 7-1. Applications Made to the IPRS and Hypotek of All Categories**

Source: IPRS

<b>Year</b>	<b>IPRS</b>	<b>Hypotek</b>	<b>Combined</b>
2000	90 283	150 220	240 503
2001	129 630	147 830	277 460
2002	158 990	148 456	307 446
2003	195 921	177 383	373 304
2004*	153 954	125 558	279 512

\*January to August 2004

The numbers also confirm the expected change in the balance between the two registries – use of the IPRS has been growing more strongly, as more properties have entered the registry. However, despite the changing balance, the numbers reveal a significant difference in the levels of use of the IPRS and the hypotek. IPRS applications are fewer than 10 percent of the total 2.3 million properties (primarily rural) in the registry. Applications to the hypotek reach almost 20 percent of its 900 thousand urban property units. The reasons for this difference are probably related to the higher levels of economic activity and real property transactions in the cities, the higher value of urban land and the larger scale of urban development projects.

The significance of the total numbers and their trends cannot be more clearly understood from the available data. A deeper study would try to compare these numbers with other statistics about property transactions and investments, such as data from the banks, data on construction permits or completed construction, etc. In theory, the numbers of users of the registry should rise and fall in relation to these economic figures. Another area of inquiry would be to relate the registry numbers to numbers of notary transactions, court case filings or other legal proceedings.

### **International comparison**

Another way to evaluate the numbers of IPRS and hypotek applications is to look to international experience. Do registries in other countries exhibit some typical levels of activity, overall or for certain categories of applications? For an overall comparison, reference is made to the statistics published by the Cadastre and Registry System of Lithuania. This former Soviet state has a population similar to Albania’s and an economy in which agriculture is dominant. Lithuania reports that its registry contains 1.248 million registered land parcels (without classifying buildings as separate objects), and it reports use of the registry in the following way:

- over 900 “users” each month;
- between 150,000 and 180,000 “searches” of the registry data each month;
- over 75,000 printed registry abstracts each month;
- over 25,000 registered land sales in 2003.<sup>1</sup> ([www.kada.lt](http://www.kada.lt))

Three aspects of this statistical data for Lithuania are significant, in comparison with Albania. First, there is a very large difference in the volume of use of the Lithuanian registry. With a

<sup>1</sup> The website of the Lithuanian registry and Cadaster Service, [www.kada.lt](http://www.kada.lt).

database half the size of the Albanian IPRS, the Lithuanian registry handles a flow of information that is four or five times the amount generated by the Albanian system. (See more detail about the differences in “output” and “input” categories, below.) Second, one reason for the very high level of “searches” in Lithuania is that interested parties can enter the database through the Internet and computer programs, without making applications to the registry office and without paying fees. They pay only when they need a document (a “registry abstract”). Third, despite the great volume of data flowing in and out of the registry, the number of “users” – 900 a month – is relatively small. The meaning of this is that most new “input” transactions in Lithuania are carried out by a limited number of professional services (notaries, lawyers, bank representatives, real estate brokers) working for clients.

Another figure for comparison is the record of property "turnover," given in the Review of Baltic States Real Estate Market, which analyzes the sales and leases of properties in the three states, Lithuania, Latvia and Estonia, each year. The combined average for all three states has been at 5-6 percent of all properties in the years up to 2000, with a gradual decline to 4-5 percent. This is somewhat higher than the "turnover" of properties in mature markets in Europe and the US, where 2.5 percent to 4 percent is the average. In Eastern Europe and the former Soviet states, pent-up demand explains the higher levels.

### **Categorical analysis of the national data**

For the categorical analysis, the nine selected categories are studied in two groups – the “output” applications and the “input” registrations of new documents. There are two primary “output” categories: certificates of ownership and verifications of ownership. Another category, certified copies of archive records and map extracts, is also significant.

The trend in growth of the numbers of Certificates of Ownership issued is a positive sign. It shows either that citizens now understand the value of the certificate as proof of their rights or it shows that judges, notaries, lawyers or real property brokers are asking citizens to show the certificates in courts and transactions. The numbers of certificates can be read cumulatively from year to year, because each owner can receive only one certificate. Overlap occurs, of course when a property is sold and the old certificate is destroyed and a new one issued to the new owner. Therefore, a rough calculation can be made that during four and a half years – 491,000 property owners have received their certificates. If a few more are counted for 1998-1999 and some are discounted for sales to new owners, then about 20 percent (550,000 to 600,000 property owners out of 3 million total registered properties) are shown to have certificates. The 80 percent of owners who have not gotten certificates would include owners who have not engaged in any actions or transactions (and have not had the need for a certificate) or they may be people who engaged in “informal” transactions.

Verifications of ownership are the alternative documents to the certificates, which do not carry the “guarantee” of legal status under Law no. 7843. They are issued as negative verifications, that a person does not have property registered. Thus, as First Registration proceeds the numbers of verifications should decline. This appears to be happening but without a straight line trend.

### Chart 7-2. Applications for Certificates of Ownership

Source: IPRS

Year	IPRS	Hypotek	Combined
2000	35,563	47,592	83,100
2001	48,850	40,466	89,200
2002	54,983	46,773	101,700
2003	70,688	53,427	124,100
2004*	56,363	37,163	93,500

### Chart 7-3. Applications for Verifications of Ownership

Source: IPRS

Year	IPRS	Hypotek	Combined
2000	4,684	25,537	30,100
2001	9,121	30,405	39,500
2002	8,451	16,875	25,300
2003	11,683	26,855	38,500
2004*	10,667	19,179	29,700

\*January to August 2004

Taken together the figures for the "output" documents show a gradual growth, which reached over 160,000 certificates and verifications in 2003. This was about 5 percent of the total properties in the database -- 3 million -- a figure that is in line with the "turnover" rate, reported for the Baltic States. As an indicator of "turnover," however, the Albanian figure must be discounted, since the Certificates and verifications are used not only to enter transactions, but for proofs in courts, administrative tribunals and other purposes. A particularly significant use is to show the holdings of applicants for social assistance.

### Chart 7-4. Applications for Certified Copies of Archive Documents

Source: IPRS

Year	IPRS	Hypotek	Combined
2000	24,472	30,052	49,900
2001	37,558	31,427	68,900
2002	42,811	39,612	82,400
2003	66,809	51,055	117,800
2004*	49,986	37,180	87,100

\*January to August 2004

The trend in growth of applications for copies of documents (kartelas, map extracts and other documents in the archives) is also a positive sign. It shows that some potential buyers and investors are checking the status of property before engaging in transactions, that courts and other institutions are requiring registry documents to resolve disputes. Comparing the annual figures of applications for copies of documents (124,000 in 2003) with the total number of registered properties (3 million) gives the figure 4 percent. The meaning and significance of this percentage could only be judged by a comparison of other data, if it were available. Relevant data would include the numbers of court cases involving real property filed each year; the numbers of immovable property transactions, which the notaries are preparing, and estimated numbers of informal transactions compiled by municipal planning and enforcement agencies.

One “test” of the annual number of 124,000 (4 percent) is to compare it to the numbers shown for Lithuania – 75,000 copies of registry abstracts per month and 180,000 free “searches” of the registry database. The Albanian number is very small by comparison.

The six categories of applications, which represent the “input” of data to the registry show more varied trends than the “output” figures. These categories include the following:

- (1) Registration of ownership
- (2) Registration of a transaction – sale, lease, sublease
- (3) Registration of a mortgage
- (4) Registration of a servitude
- (5) Subdivision or consolidation of a land parcel
- (6) Transfer of ownership by inheritance

These categories have not all shown steady growth in the numbers of applications. Most have shown small levels of growth, stable numbers or declines.

An application for registration of ownership involves the recognition of a new property object (with creation of a new kartela). This can happen either in the process of transfer of a property from the state – such as the final decision of a restitution claim. It can also happen in the case of completion of construction of a new building when the building and any separately-owned premises are recognized as new objects. The numbers of these applications have remained about the same in all the years of the study period – around 11,000. The significance of the number would be judged in comparison with statistics such as objects of completed construction, and restitution and privatization data.

#### **Chart 7-5. Applications for Registration of Sales, Leases and Sub-leases**

Source: IPRS

<b>Year</b>	<b>IPRS</b>	<b>Hypotek</b>	<b>Combined</b>
2000	9,629	26,533	42,500
2001	12,847	19,792	32,500
2002	14,741	18,020	32,700
2003	17,081	15,749	32,700
2004*	11,675	9,125	20,800

\*January to August 2004

Applications for the sale, lease or sublease of an object would be expected to rise as properties become fixed in the registry, since this category encompasses the subsequent transactions that owners engage in. The fact that the numbers of applications are declining year-to-year indicates a significant problem in real property practice and civil law in Albania. It is known from other sources that transactions are rising – thus, larger numbers of transactions are taking place outside the registry. Other data sources should be consulted. For example, the annual report of the Ministry of Agriculture and Food for 2002 reported that in 2000, there were 3 525 sales of agricultural land and 10,072 leases of agricultural land. The total of just these two agricultural-related figures exceeded the total given in the IPRS report for the category (9,629) by almost 4,000 transactions. Since the IPRS database included apartments and other properties, it can be recognized that there were substantial “missing” transactions – that is, taking place outside the registry. The experience of First Registration in 16 urban zones in 2004 has confirmed the problem. Among the urban kartelas, representing almost 100,000 properties, there were virtually no leases found in the hypoteks. Similarly, in six of the urban zones, the subcontractors were authorized to provide “update” corrections of the apartments previously registered. Changes in ownership and in other characteristics of the apartments had to be made in thousands of units

because their owners had neglected to bring these changes to the registry in the intervening few years. Comparative reference to the Lithuania figures shows 25,000 land sale transactions in that country in 2003, with a total base of 1.2 million objects (2 percent of the total). The Albania figure of 32,700 registrations of sales, leases and subleases for the year represents about 1.2 percent of the total number of objects for a category that is supposed to be much broader (including leases). This, of course, is the most troubling figure illustrating the weakness of the IPRS – if the trend is not changed, the system will be undermined because its data will have no integrity.

**Chart 7-6. Applications for Registration of Mortgages**

Source: IPRS

<b>Year</b>	<b>IPRS</b>	<b>Hypotek</b>	<b>Combined</b>
2000	469	4,605	5,074
2001	1,163	4,874	6,037
2002	2,190	5,791	32,700
2003	1,809	3,095	32,700
2004*	131	397	20,800

**Chart 7-7. Applications for Registration of Servitude Agreements**

Source: IPRS

<b>Year</b>	<b>IPRS</b>	<b>Hypotek</b>	<b>Combined</b>
2000	9	1	10
2001	20	7	27
2002	127	3	130
2003	12	14	26
2004*	23	18	41

\*January to August 2004

The remaining categories of “input” actions only increase the illustration of how the IPRS is failing to develop as the essential base of legal data about property rights. Registration of mortgages shows a variable pattern of growth and decline as well as extremely low numbers. Only tiny numbers of servitudes have been created and registered. These are indicators of the preference for informal agreements and the desire to avoid fees. Most servitudes arise from the needs and actions of utility services and state and municipal agencies controlling infrastructure. The low figure illustrates that in Albania, major institutions controlling very valuable property objects have not been convinced of the need for registration to protect their interests.

### Chart 7-8. Applications for Registration of Inheritance

Source: IPRS

Year	IPRS	Hypotek	Combined
2000	587	522	1,100
2001	1,530	1,578	3,100
2002	1,183	1,716	2,900
2003	2,623	2,541	5,100
2004*	2,670	1,907	2,600

\*January to August 2004

Inheritance transfers also are extremely low. Roughly, 1.5 to 2 percent of all properties owned by individuals would be expected to transfer in inheritance each year – reflecting the rate of death in a given generation of owners. The very low numbers – less than one-quarter of one percent – shows that Albanians are avoiding the registry, presumably to save the fees. This is a main cause of the failure to “update” apartment properties, mentioned above.

### Chart 7-9. Applications for Registration of Subdivisions and Consolidations

Source: IPRS

Year	IPRS	Hypotek	Combined
2000	4,207	2,231	6,400
2001	4,942	2,695	7,700
2002	6,604	2,799	9,300
2003	7,386	2,573	9,900
2004*	5,543	2,567	8,100

\*January to August 2004

The numbers of registrations of subdivision and consolidation actions appear surprisingly high, in comparison to the low numbers of other “input” transactions. This may be due to the fact that subdivisions and consolidations require the services of surveyors, who have the closest professional linkages to the staff of the IPRS. The data does not separate consolidations from subdivisions, so no conclusion can be drawn whether people are consolidating small rural land parcels for improved farm production (in accordance with government policy), consolidating urban parcels for construction or are further fragmenting land (in contravention of government policy).

### Conclusion

This analysis of the user data should be read as a warning to the IPRS, the government of Albania and its international development partners that may be contemplating future assistance. There appear to be flaws in the design, operation, legal basis and public outreach of the IPRS, which if not corrected will nullify all the previous and any future investments in it.

The integrity of the registry system depends on the accuracy of its data, in identifying the owners and holders of rights. If it cannot provide this information, then people and institutions will find other ways to try to protect their rights and carry out transactions. Further, the legal “guarantee” that the Law No. 7843 appears to provide, will never be a reality.

The solution to the problem of low use of the registry is not a technical or legal problem and it will not be solved by legislation that tries to give the IPRS more strong “powers.” Instead, it is a political and management problem that will only be solved by a group of actions, intended

to change the interaction of the IPRS with institutions and the public outside of itself. The following strategies are recommended:

- In order to develop a stronger community of institutional and professional users, the IPRS and future projects of First Registration should engage in frequent education and outreach activities of broad masses of the citizens and to the groups of main professional “users” – builders, bankers, lawyers, notaries, real property brokers, and large institutional property holders.
- Close cooperation must be maintained with the Ministry of Justice, the magistrates and notaries to further clarify the ways in which the registry documentation is being required and used in court proceedings and in transactions. The responsibility of courts and notaries to transfer new documents, making changes in property rights to the registry, must also be clarified. Every effort should be made so that citizens will not be required to take the documents from the courts or notary offices and carry them to the registry offices. (The courts, notaries and registry must agree on ways to share the costs of these tasks based on the payment of one fee for the entire service.)
- Operational changes must be made to make the registry office more efficient and “friendly” to the institutional and professional users and the citizens, who come to use it. This will require a more clear division of responsibilities in the registry offices, with delegation of authority to clerks and lower level managers to issue the routine documents – such as certificates of ownership. The district registry lawyer should not have to review every document that is brought in to the registry, and the district registrar should not have to sign every action and document. Delegation of authority requires frequent and well-designed training for the staff.
- Regulations and Instructions for the IPRS should be reviewed to remove any requirements for the submission of documentation that is not essential for registration. In particular, there are far too many actions in which it is required that citizens and juridical persons provide surveys and plans of buildings and premises. After systematic First Registration, the IPRS has accurate maps of land parcels and buildings. New plans and surveys are necessary only in cases where boundaries of property objects are being substantially changed.
- The laws, regulations and instructions should be reviewed to remove all responsibilities from the registry office for any task not related to intake and output of legal property documentation. This includes any responsibility to collect taxes or fees on behalf of other agencies. It also includes any tasks related to the enforcement of urban planning requirements.

## **Appendix 8. Agricultural, Forest and Pasture Land Holding**

### **Introduction**

The situation of rural land and property relations remains in transition with competing fundamental policies, land rights and administrative status defined in categorical terms; unfinished programs of ownership transfer; and incomplete evolution of the principles and institutes of civil law. However, there appears to be forward momentum in the activities of land reform. It is unclear whether the reforms are, in fact, being absorbed and solidified in government administration or in rural social and political life.

### **Rural land and property reform policies**

During the past years of reform activity, five major policies have been introduced at different stages in order to guide the allocation of ownership and control over rural land. These policies are not consistent with each other but, within the categorical structure of land and property relations, each has been given priority with respect to different categories of rural land and property. The inconsistencies among them have caused practical problems primarily at the borderlines and the points of their intersection and overlap.

- (1) The policy of equitable family ownership of agricultural land and farm assets formed the basis of the initial land reform, under Law no. 7501. This principle made it possible to accomplish the break up of collective and state farms quickly and to diffuse the social and political unrest that had begun when the farm system collapsed in 1989-1990.<sup>2</sup>
- (2) The policy of retaining state ownership with subordinate citizen and enterprise use was applied to forests, pastures and other rural lands, needing particular environmental protection. Initially, the laws envisioned the continuation of central state control over these lands but, in recent years, the policy of decentralization of authority has guided the division of these lands between local municipal (commune) control and state agency control.
- (3) The policy of restitution (without regard to an unequal result) has been an alternative policy to equitable family ownership and state ownership. The initial law authorized restitution of land and housing within villages as well as some forests and pastures but agricultural fields were not to be given in restitution. This rule of law was not applied strictly in practice and in some villages agricultural fields were divided on the basis of pre-1945 holdings. In other villages former owners claimed agricultural land but were resisted by "newcomers" and the communal officials have held to the equitable division under Law no. 7501. In still other villages, the conflicting claims remain unresolved or conflicting documents, giving ownership rights to the same land have issued to different families. Similarly, restitution of forest and pasture areas has been given in some places, not in others, and many tracts have uncertain

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<sup>2</sup> Ministry of Agriculture and Food of Albania (2002) *Annual Report*, at pp. 17-19. See also Frauke Jungbluth and David Lugg (2002) *Albania Rural Development Strategy*, World Bank and Albania Ministry of Agriculture and Food, pp. 5-8.

status because they may potentially be given as alternative grants of land to former owners.

- (4) The policy of re-consolidation of agricultural fields has gained prominence in national policy as various studies have shown the inefficiencies of small, fragmented farm holdings. The Ministry of Agriculture has described the development strategy, in which mechanized farms of substantial size will be linked vertically to food processing enterprises. However, the Ministry has also recognized that re-consolidation will have social consequences, dividing rural society into capitalist and working classes and forcing more surplus labor to leave the farming sector.<sup>3</sup> Thus the policy of consolidation is being advanced as a gradual, long-term process to be achieved in the medium-term by leasing, rather than sale of family farmland.
- (5) Policies of environmental protection have guided the definition of areas of protected lands and the evolution of the systems of land use regulation and rural land management. In the initial laws, protection of land was described primarily in terms of limitations on tenure rights. Certain land categories were withheld fully from private occupancy and use and, for lands transferred to citizens and enterprises, conditions and restrictions were made part of the agreements transferring ownership, leasehold and rights of use. More recently, with introduction of such principles as sustainable development and biodiversity protection, the policies envision a multi-faceted system of management, planning and regulation. Rather than strict division of categorized lands, the new management and regulatory strategies involve areas such as wetlands, watersheds, coastal zones, in which several types of land and multiple resources co-exist and development is to be balanced with preservation, conservation and limited use.<sup>4</sup>
- (6) Most recently, a new policy strategy of poverty reduction has emerged in response to studies that have measured the impacts of other policies on rural families, children, women and society in general.<sup>5</sup> Such studies have found that for many families, the size, location and quality of their agricultural holdings is inadequate and they are unable to benefit from the resources of forests, pasture and other lands controlled by the state. Rural family well being is also linked, through migration, to the status of land and property holdings in urban areas and to international economic relations. Poverty reduction strategies anticipate increases in farm production through cooperative methods and common use of resources, upgrading the skills of family farmers, diversifying their sources of income from non-farm activities and the reorganization of rural social welfare systems.<sup>6</sup>

These various policies are found in the plans and strategies, adopted by the government to guide rural development and its evolving relationships with the European Union and other

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<sup>3</sup> Ministry of Agriculture and Food of Albania (2002), *Annual Report*, at pg. 28-30.

<sup>4</sup> Ministry of the Environment (2002), *Updated National Environmental Action Plan*; Economic Commission for Europe Committee on Environmental Policy (2002) *Environmental Policy Review, Albania*.

<sup>5</sup> World Bank (2003) *Albania Poverty Assessment*, Human and Development Sector Unit, Europe and Central Asia Region.

<sup>6</sup> See L. Daku, G. Norton, D. Pfeiffer et al., (2000) *Farmers' Knowledge and Attitude towards Pesticide Use and Olive Pest Management Practices in Vlora*, Integrated Pest Management Collaborative Research Support Program, Working Papers 00-1, [www.ipm.csrp.org](http://www.ipm.csrp.org). Also Harriet Epstein (2004), *Assessment of Child Health and Protective Services*, report prepared for the Christian Children's Fund.

international organizations. Strategy for Agricultural Development (called the "Green Strategy") which incorporates most of the contemporary principles for balanced development, environmental protection and preservation in rural areas.<sup>7</sup> At the detailed level in particular laws, regulations, administrative processes and practice, these competing policies have not been reconciled. The fundamental structure of categorized law and administration continues to be the framework in which decisions are made by regional and local ministry staff, by local government officers and by the various agencies of the civil law -- judges, notaries, registry clerks.

The categories of rural land provide the basis for all aspects of legal status and administrative jurisdiction. This includes the eligibility of the land for private, state or communal ownership and for subordinate rights of use or lease. The categories also determine the level of government (state or local) and agencies of government given primary responsibility for making decisions about the allocation of the land, its regulation and management.

### **Agricultural fields**

Agricultural fields include cultivated fields, perennial orchards and vineyards. These lands are made subject to private ownership by two laws. Law no. 7501 has authorized the transfer of ownership of the agricultural fields of the former collective farms to farm families.<sup>8</sup> The agricultural fields of state farms were divided among the employees under a right of use but, later, these holdings have been transformed into ownership.<sup>9</sup> Every owner of an agricultural land parcel is required to use it only for agricultural purposes, to preserve and increase its productivity, and to "systematize and protect it in accordance with various projects."<sup>10</sup>

Administrative jurisdiction over the agricultural fields rests jointly with the Directorate of Land Administration of the Ministry of Agriculture and Food and the regional administrations (qarkut) and local self government administrations of communes and municipalities. Village leadership is not given status in the law but, in many places, the village elders exercise considerable influence in practice.

Initially, the division of ownership of agricultural lands was made by the Land Commissions, which were organized in hierarchical fashion -- national, regional, communal and village.<sup>11</sup> The commissions were assisted in carrying out the technical tasks of mapping, surveying and preparing documents by the cadastre offices (the regional and local subdivisions of the Directorate of Land Administration). The cadastre offices kept copies of the tapis, which gave evidence of the ownership rights of each family in the agricultural and village lands.

In the process of first registration, the tapis and other documents, related to land ownership and subordinate rights are supposed to transfer into the IPRS, and it gains the power to determine any questions about ownership and subordinate rights.<sup>12</sup> Similarly, after first registration, transfers of ownership or subordinate rights in agricultural land take place by direct

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<sup>7</sup> See UN Economic Council for Europe, (2000) Albania National Report for the Joint Efc Timber Committee, [www.unece.org](http://www.unece.org).

<sup>8</sup> Law no. 7501 of 19 July 1991, *On Land*.

<sup>9</sup> Law no. 8053 of 21 December 1995m *On Transferring Agricultural land into Ownership without Compensation*.

<sup>10</sup> Law no. 7501 of 19 July 1991, *On Land*, Article 11.

<sup>11</sup> Decision of the council of Ministers no. 230 of 22 July 1991, *On Establishment of Land Commissions*.

<sup>12</sup> Order of the IPRS no. 184 of 8 April 1999, *Regulation on the Work of the Immovable Property Registry Office*, Chapter IV.

civil law agreements.<sup>13</sup> In this context, the functions of the cadastre offices, related to ownership and subordinate rights, should cease. The cadastre offices are now being reorganized into the regional Sections of Land Administration and Protection and the communal Offices of Land Administration and Protection, with their primary functions being shifted to the management of state-owned agricultural lands and the tasks of soil quality protection and rural land use planning.<sup>14</sup> (See Appendix 12.)

### **Refused agricultural lands**

A separate sub-category of agricultural lands are the fields, which families have refused to take in private ownership during the initial division of collective and state farm lands. Generally, these lands encompass mountain fields, remote from villages, and poor quality, terraced hillsides, which have been degraded by erosion. These lands remain under state ownership with control exercised by the General Directorate of Forests and Pastures of the Ministry of Agriculture and Food.<sup>15</sup> Communal administrations have taken control of these lands by right of use.<sup>16</sup> In the process of inventory and transfer of state lands, the communes will take ownership of these lands, with power to transfer them into private ownership or into subordinate rights of use by citizens. The refused lands may also be available for transfer in restitution or as alternative land grants to fulfill restitution claims.

In order for decisions to be made on the status of refused lands, it is necessary to inventory and assess their quality, value and suitability for use. The law prohibits any sale or lease of these lands prior to the determination of restitution claims, for which some of this land may provide alternative land grants to satisfy restitution claims.<sup>17</sup> After determination of the restitution claims, these lands will become available for re-distribution or sale to rural families. Since the quality of most of these lands is poor, however, it is unclear whether rural families will want to take ownership and control unless changes are made in the status of these lands. It may be necessary to re-categorize some of these lands from agricultural to pasture or forest, or to categories of land for housing or other development. If they remain in agricultural designation, it may be necessary to exempt the land from taxation, reflecting its low productivity.

### **Pastures and meadows, in general**

The law, No. 7917, *On Pastures and Grazing Lands*, subdivides these land areas into three classifications based on their ownership/control:

- state-owned lands, which are managed directly by the Directory of Forests and Pastures through its subordinate regional forest directorates;
- state-owned lands, which are transferred into the control of commune administrations and are made available for common use by local residents; and
- privately-owned pasture land.<sup>18</sup>

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<sup>13</sup> Law no. 8337 of 30 April 1998, *On the Transfer of Ownership of Agricultural, Pasture and Meadow Lands*.

<sup>14</sup> Law no. 8752 of 26 March 2001, *On Creation and Functioning of Agencies for Land Administration and Protection*.

<sup>15</sup> Law no. 8047 of 14 December 1995, *On Refused Agricultural Lands*.

<sup>16</sup> Law no. 8312 of 26 March 1998, *On Undistributed Agricultural Land*.

<sup>17</sup> Law no. 8047, Article 4.

<sup>18</sup> Law no. 7917 of 13 April 1995, *On Pastures and Grazing Lands*.

For all the state owned lands, the General Directorate of Forests and Pastures under the Ministry of Agriculture and Food has the initial jurisdiction to determine their categorical status and their allocation under direct state control, communal control or transfer to citizens and enterprises. The directorate can give a contract for lease of pasture areas, up to ten years, to a person or enterprise.<sup>19</sup> If a pasture area has been transferred to a commune or municipality, the law implies, but does not clearly state, that this local government administration can give a 10-year, subordinate contract, as well. However, the law also implies that the subordinate rights to use communal pastures will be exercised as a common right of the local villagers.<sup>20</sup> The law specifies that a commune or municipality must manage the pastures under its control in accordance with a management plan, and it must monitor the condition of the pastures, periodically assess their carrying capacity, and register changes in the pasture use and conditions in the cadastre. A small amount of pastureland has come under private ownership in the program of restitution.

In practice, the regime of common use of pastures does not appear to be effectively managed and conflicting policies are evident. The Ministry of Agriculture and Food has reported that the total amount of pastureland is insufficient to supply the fodder needs of all the livestock and that forest resources are being used to make up for the shortage. From its perspective of food supply and agribusiness the Ministry reports the substantial increase in livestock as a positive trend.<sup>21</sup> From the standpoint of environmental quality and resource protection, there is significant concern about the deterioration of the pastures from overgrazing, the resulting soil erosion and the removal of forest cover to expand grazing lands.<sup>22</sup>

### **Forests, in general**

The Law no. 7623, *On Forests and Forest Police*, subdivides forests into three main categories:

- state forests, owned by the government;
- state forests, owned by the government and given in use to communes and municipalities for the common use of their residents; and
- forests on privately owned land.<sup>23</sup>

The law specifies two types of authority for subordinate grants of rights to forest land and forest resources. First, it states that, from the areas of communal forests, village families can be granted areas of 0.4 to 1.0 hectare, as determined in the agreement between the forest directorate and the commune or municipality.<sup>24</sup> Second, it provides in general for the issuance of licenses for tree cutting, occupying forestland for camping and recreation purposes and taking of other resources.<sup>25</sup> All uses are subject to the forest management plans and the oversight of the forest directorate.

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<sup>19</sup> Law no.; 7917, Article 11.

<sup>20</sup> Law no. 7917, Article 9.

<sup>21</sup> See International Center for Soil Fertility and Agriculture Development (IFDC), (2004) *An Economic Impact Assessment of USAID/IFDC Assistance to Albanian Agricultural Trade Associations*, [www.dec.org](http://www.dec.org). See also Albania Ministry of Agriculture and Food, (2002) *Annual Report* at pp. 44-46.

<sup>22</sup> Associates in Rural Development (2003), *Albania Biodiversity Assessment*, report prepared for USAID, [www.dec.org](http://www.dec.org), at pp. 9-10.

<sup>23</sup> Law no. 7623 of 13 October 1992, *On Forests and Forest Police*.

<sup>24</sup> Law no. 7623, Article 4.

<sup>25</sup> Law no. 7623, Articles 7, 9, 10 and 11.

## Transfer of communal forests and pastures

The process of inventorying forests and pastures and determining the areas to be transferred into communal and municipal control has been underway for nearly ten years. The General Directorate of Forests and Pastures of the Ministry of Agriculture and Food has overseen the work of several programs.<sup>26</sup> These projects have operated under the provisions of the two laws, *On Pastures and Grazing Lands* and *On Forests and Forest Police*, and they have resulted in the transfer of lands to communes and municipalities by right of use. It is anticipated that, in the process of inventory and transfer of state owned lands under Law no. 8744, the rights of use will be transformed into ownership rights.<sup>27</sup> However, based on the provisions of Law no. 8743, these lands will remain classified as public use properties and will not be eligible for subsequent sale in ownership to families, individuals or enterprises by the local administrations.<sup>28</sup> It appears that the communes and municipalities will continue to offer subordinate rights of common usage, leases or rights of use, as provided in the laws *On Pastures and Grazing Lands* and *On Forests and Forest Police*.

The same process, overseen by the General Directorate of Forests and Pastures, has been used to transfer both forests and pastures to communal and municipal control. In the "Green Strategy" the goal has been set to transfer 40 percent of all forests (400,000 hectares) and 60 percent of all pastures (244,000) hectares to the communes and municipalities.<sup>29</sup> The procedure has involved the following stages:

- The technical staff of the Forest Directorate works with the communal or municipal officers to define the size and boundary lines of areas to be assigned to the commune as a whole and to each village within it. This involves careful technical work and negotiation. The historic traditions of families and clans in different villages must be taken into account, along with the recent changes in village and communal administrative borders, as well as assessments of the topographic and ecological situation and the boundary lines of private and state lands.<sup>30</sup>
- The terms and conditions of the right of use, by which the commune or municipality takes possession and control of the lands is worked out. These agreements provide a 10-year term, define the outer boundary lines of the tracts and set limitations on the ability of the local administration to extend subordinate rights to village residents or to other enterprises or persons.<sup>31</sup> The agreements should be subject to registration in the IPRS; however, this has not been done in most cases.
- The technicians of the Forest Directorate, with the local administration and experts from the research institutes, prepare the forest and pasture management plans. In light of international experience, public participation has been introduced into this process. The plans define the level and types of use of sub-areas of the communal forest or pasture. The plan must take into consideration the locations and quality of various plant and animal resources, the level of erosion or other degradation and the carrying capacity of the resources for grazing and tree-

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<sup>26</sup> The World Bank USAID

<sup>27</sup> Law no. 8744 of 22 February 2001, *On the Transfer of State Immovable Property to Local Governments*.

<sup>28</sup> Law no. 8743 of 22 February 2001, *On State Immovable Property*, Article 3.

<sup>29</sup> Decision of the Council of Ministers of 1999, *On Adopting the Strategy of Agricultural Development in Albania*.

<sup>30</sup> The law no.7917, Article 5, directs the General Directorate of Forests and Pastures to base the decision on communal pastures on the 1945 village borders. With respect to forests, however, the law does not give any specific directive for setting the boundary lines. See Council of Ministers Decision no. 700 of 23 October 1995, *On Defining the Boundaries of State Pasture and Grazing Lands*.

<sup>31</sup> The local administration cannot exercise the power to change the designation of the land from its forest or pasture category, thus precluding any subordinate transfer for a different use; law no. 7623, Article 7 and law no. 7917, Article 8.

cutting. These factors must be balanced against the number of families in the village, the size of their livestock herds, their needs for firewood and other resources.

- In some projects, local citizens have been organized into users' associations, which acquire the subordinate rights for grazing, harvesting of firewood and herbal plants and other activities. The user association works out the specific rights and responsibilities of its members as part of the common use.

In a recent evaluation of the outcome of this process, the researcher reports many weaknesses and a variety of approaches.<sup>32</sup> It appears that there are not clearly defined standards to guide the communes in the ways the subordinate agreements with citizens should be structured. One Order of the General Directorate of Forests and Pastures appears to limit the communes to giving only one-year contracts for forest use, each of which must be approved by the manager of the regional directorate.<sup>33</sup> In two projects, the User Associations have created a simple agreement for each member family, which consists of a one-page document spelling out the main responsibilities of use and a sketch of the land plot, within the forest tract, assigned to the family.<sup>34</sup> These agreements and the higher level agreements between the Users' Associations and the communes are not prepared or recognized as civil law property agreements and they are not registered. Thus they offer weak protection for the families and do not preclude the commune from granting use of the communal forest or pasture resources to persons or enterprises from outside the village.

It appears that many customary aspects of forest and pasture activity, which were under the control of village elders, are not being respected in the management plans and user agreements. Most important, the limited rights given to citizens and their user associations to organize as profit-making businesses appear to limit their sustainability.<sup>35</sup> The new Natural Resources Development Project of the World Bank, announced in February 2005, is intended to expand the transfer of forest and pasture areas to 80 other communes and to strengthen the legal and planning instruments for citizen use.<sup>36</sup>

### **Protected zones**

Many areas of rural and mountain land come under the classification of protected zones. In recent years, Albania has adjusted its administrative system of protected zones to the standards of the World Conservation Union (IUCN), which makes provision for six sub-categories:

- Strict protection areas (for very important environmental lands);
- National parks;
- Nature monuments
- Managed natural areas (protecting plant or animal habitats);
- Landscape and seascape protection zones; and
- Managed resource protection zones.

These categories formed the basis of the Ecological Survey, carried out in 1995-96, which added several new areas to the protected zones and which adjusted existing areas to the new categories.

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<sup>32</sup> See Harold Lemel (2005), *Compilation of Reports, Findings and Proposals on Land Tenure and Organizational Issues*, Natural Resources Development Project of the World Bank.

<sup>33</sup> General Directorate of Forests and Pastures Order no. 825 of 13 July 1999, cited by Harold Lemel.

<sup>34</sup> USAID Albania Private Forestry Development project and the Korce Trans Border Wildlife project.

<sup>35</sup> Harold Lemel (2005) at pp. 32-33.

<sup>36</sup> World Bank (2005), Preparation of a Natural Resources Development Project, grant no. TF 053121.

This work was carried forward in 2000, with the adoption by the government of the National Strategy on Biodiversity.<sup>37</sup>

Ownership of land within the protected zones can encompass private as well as state ownership; however, in most of the sub-categories, the land has been kept under state ownership and most often falls into the categories of forests and pastures. The jurisdictional authority and procedures for administration of these zones law is defined in the law *On Protected Zones*.<sup>38</sup> It requires that each zone be managed by an Administrative Unit, which is defined by a Council of Ministers decree. Generally, the broad policies and regimes of use of land in the zones are set by the Ministry of Environmental Protection, while the administration and management of the territories takes place under the General Directorate of Forests and Pastures. Representatives of local government and civil society organizations can also be made members of the Administrative Unit. The law, in Article 15, provides that the Ministry of the Environment or the local government, in cooperation with third parties, may draft a management plan for each zone. The plans contain the objectives of protection, mechanisms of regulation and management, and permitted activities within the zones.

### **Village lands and properties**

Within the village boundary lines, houses with accompanying garden plots have been transferred into ownership by their residential occupants. This has taken place by the preparation of an inventory and list of house owners in each village, prepared in accordance with a special decree of the Council of Ministers in 1995.<sup>39</sup> Trade and service lands are susceptible to ownership by their tenant enterprises or other juridical persons under the programs of "privatization," however, few such transfers of land ownership have taken place. Vacant village land, designated for trade and services or housing remains in state ownership, with the village having the right to determine its allocation in conjunction with development projects.

For purposes of development, each village is defined as an urban settlement with a "yellow line" boundary, beyond which the construction of housing and other non-agricultural buildings and structures is prohibited. Due to the large-scale movement of the population to the low land areas, certainly there is need to extend the yellow line in most of the villages, especially on those villages that at the same time are commune centers. Within the "yellow line" the development of new housing and other trade and service buildings are subject to the rules and regulations, outlined in the laws On Urban Planning. (See Appendix 13.)

### **Rural Land Holding**

As a result of the various programs of transfer of ownership and subordinate rights, the structure of land holding in rural areas in 2004 is shown in the following chart.

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<sup>37</sup> Decision of the Council of Ministers, no. 532 of 5 October 2000, *On Approval of the National Strategy on Biodiversity Protection*.

<sup>38</sup> Law no. 8906 of 6 June 2002, *On Protected Zones*.

<sup>39</sup> Decision of the Council of Ministers no. 432 of 14 August 1995, *On the Preparation and Approval of the Nomination List of the Owners of Construction Sites and Houses*. Registration of these rights on the basis of the list (without an ownership document) is provided for in the Order of the IPRS, no. 184 of 8 April 1999, *Regulation on the Work of the Immovable Property Registration Office*, Chapter 4, paragraph 13.

### Chart 8-1. Rural Landholding in 2004

Source: author's compilation (data from Ministry of Agriculture and Food, IPRS)

Category of ownership/control	Hectares	Parcels	Registered
Agricultural (cultivated and perennial)	700,250		
-- family members of cooperatives	562,470	1.9 million	80%
-- family employees of state farms			
-- refused land (communal control)	110,000		
-- state owned	26,780		80%
Forests	1,050,360		
-- State	760,200		05%
-- Commune	283,840		
-- Private	6,314		10%
Pastures	481,400		
-- State	160,000		05%
--Commune	244,200		
--Private	23,600		15%
Village housing	400,000		70%

### Institutional Structure

Administrative jurisdiction over rural land for purposes of determining the rights of ownership and subordinate rights of use remains defined by the categorical status of a land parcel or tract. The primary institutional organizations are the following:

- **Land Commissions** -- national, regional, communal/municipal and village -- were created to carry out the division of agricultural fields to collective farm members and the subsequent division of state farm lands to employee families. The cadastre offices of the Land Commissions at the communal/municipal or regional level have kept copies of the "tapis" and they are called upon to produce these documents to resolve conflicting claims and boundary line disputes. When the programs of land distribution came to an end, the power of these offices has ended and in most places, they ceased to function. Municipal or communal officers (usually the mayor) succeeded to the powers and the archives were usually transferred to the archives of the municipal council or the regional land Administration and Protection section.
- **The Immovable Property Registration System** becomes the authority with power to determine questions of ownership and subordinate rights, after the process of first registration is complete in a cadastre zone. Residual power resting in the Land Commission or in a superseding local officer should cease. In some districts, the archive files from the Land Commissions have been transferred into the IPRS district offices. In other districts, the copies of the tapis and other documents have remained in communal/municipal or qark custody with copies in the IPRS district offices.
- **Land Administration and Protection** consists of a two-level authority with a regional (qark) Land Administration and Protection Section and a communal/municipal Land Administration and Protection Office. The sections and offices have dual reporting responsibilities -- both to their respective regional or local councils, for policies and tasks, and to the Directorate of Land Administration in the Ministry of Agriculture and Food for their technical standards and methodologies. The sections are given authority to create and keep the land cadastre. The offices have responsibility for the management and allocation of state-owned agricultural and village lands, including the power to negotiate and prepare leases and use rights for parcels and tracts of state owned land.

With respect to privately owned lands, their jurisdiction is limited by legal definition to the protection of soil quality and the physical/natural attributes of agricultural and other lands. However, since they have inherited the "tapi" archives (as well as the staffs) of the Land Commissions, in many place they continue to have a role in resolving questions about land ownership and control.

- **Directorate of Forests and Pastures** consist of regional directorates with subordinate offices organized on a forest administrative district basis, all subordinate to the General Directorate of Forests and Pastures in the Ministry of Agriculture and Food. The regional and subordinate offices have the power to determine the areas of pasture and forest to be transferred into communal/municipal control. In the areas retained under direct state control, they negotiate and prepare the leases, timber-cutting licenses and other permits for use of the forest and pasture resources. In the communal areas, they negotiate and prepare the 10-year use contracts and assist the communal/municipal authorities in creating the subordinate rights to be given to users associations or to citizens and enterprises. The regional directorate creates and maintains the cadastre of forests and cadastre of pastures. They also maintain the archives of leases, licenses and contracts. For the agreements that are not registered in the IPRS (almost all of them) the directorates serve as the source of information about occupancy, leasehold and rights of use in the pasture and forest areas.
- **Management entities for protected lands** are created for each national park, nature reserve and other protected area. These organizations are under the direct supervision of the Directorate of Protected Areas and Hunting, under the General Directorate of Forests and Pastures in the Ministry of Agriculture and Food. The Ministry of Environmental Protection also has a responsibility of oversight in terms of the methods and technical standards for protection of habitats and resources in these zones.

Within this administrative structure, the powers of **local self government** -- communal and municipal councils and their administrative offices -- are defined in overlapping terms with the state agencies. In practice, local administrations are only slowly developing their authorities and capabilities. Much will depend on the ways in which the local offices of Land Administration and Protection and the lowest level of forest and pasture directorate offices will coordinate their activities under the direction of the communal, regional and municipal officers.

### **International partnership activities**

In rural land reform activities, international development partners have supported Government initiatives in several sub-sectors, including the organizations of land registration and the transfer of forests and pastures to communal control, the rehabilitation of irrigation and other rural infrastructure, and assistance to small farmers.<sup>40</sup> USAID and the European Union have worked with the IPRS and the Project Management Unit of the Ministry of Agriculture and Food to register ownership rights of citizens in over 2,000 rural cadastre zones.<sup>41</sup> The World Bank has provided assistance for the technical improvement of the IPRS. The World Bank has been an important development partner in this area, as has USAID, in assisting the transfer of forest and pastures to communal control.

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<sup>40</sup> An overview of the programs of the various international partners can be found in EBRD Albania (2004), *Annex to the EBRD Country Strategy*, [www.EBRD.com](http://www.EBRD.com).

<sup>41</sup> See ARD, Inc. (2004), *Final Report on the Albania Registration Organizational Improvement Project*, prepared for USAID, [www.dec.gov](http://www.dec.gov).

More recently, projects directed toward multi-faceted environmental problems have had impact on the progress of defining citizen rights and local and state responsibilities in land. The Watershed Management projects, assisted by the World Bank at Lake Ohrid and Lake Prespa, have begun to define the ways in which limitations on the use, development and allocation of land have impacts on water quality. Similar work, assisted by the European Union and the World Bank, will begin at Lake Shkodre in the near future.

With relation to agricultural land use, farm organization and farm production, there have been a number of projects. The European Union and the GTZ have supported the Government's initiative to reorganize the Ministry of Agriculture and Food and its service divisions. The World Bank Agricultural Services Project has assisted the Government's initiative to increase access of small farmers to quality seeds, product marketing institutions and services, and production technologies. The World Bank has also assisted the Government's initiative to improve the rural land registry offices and to attempt pilot land consolidation projects.<sup>42</sup> These projects are helping to transform the administrative activities from command and control to service providing at the regional and local levels. The EU assistance has pertained to the creation of extension services in the rural districts. The EU continues to provide training and increase the capacities of farm services.

Projects to renew rural infrastructure have also been a focus of international support. In particular, the World Bank has invested in rebuilding irrigation and drainage works and reorganizing their management into Water Users Associations and Drainage Boards that will better serve the new pattern of smaller fields.<sup>43</sup> Similarly, the Community Works Project has provided funding for numerous small projects, re-paving rural roads, rehabilitating schools and health centers, rebuilding bridges and canals.<sup>44</sup> Similarly, within the European Union CARDS program, investments have taken place to repair and renovate greenhouses and other farm structures, as well as irrigation systems.<sup>45</sup>

Micro-credit projects have put into place seven institutions, operating in nearly every region of the country. Of these five appear to have a specific rural focus. The Saving Credit Association Union a network of savings and credit associations established by the government with World Bank assistance, is active in 401 villages and is providing services to an estimated 40 percent of the population in these villages. The Mountain Area Financing Foundation, organized by IFAD under UN FAO, makes very small loans -- averaging \$1,100 -- to farmers and rural entrepreneurs. The For the Future Foundation, assisted by NOVIB/Dutch International Aid, has focused on assistance to vintners. It has created 24 grape producers associations with 1,805 farmer-members (242 of them women), and has extended 448 loans to members (by mid-2004). The Albanian Dairy and Meat Association and the Livestock Entrepreneurs Association, both organized in partnership with USAID (through Land o'Lakes) also have a component of working capital loan assistance. The project assists farmer members in arranging small loans from the Albanian Partnership in Micro-Credit (PSHM) and large loans from the American/Albanian Bank. In 2004 a new micro-credit activity, directed toward farms in the Lezhe district, has been organized by World Vision, with funding from the Canadian International Assistance.

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<sup>42</sup> See World Bank (2001), *Albania Agricultural services Project, Project Appraisal Document*, no. 22161.

<sup>43</sup> See World Bank (2003), *Albania Community Works Project*, <http://www-wds.worldbank.org>.

<sup>44</sup> See World Bank (2002) *Albania Community Works Project, Implementation and Completion Report*, no. 25260, <http://www-wds/worldbank.org>. See also website of the *Albania Development Fund*, [www.Albaniaonline.net](http://www.Albaniaonline.net).

<sup>45</sup> European Union (2004) *Stabilization and Association Country Report 2004*, <http://europa.eu.int>.

Some partnerships have been directed toward the creation of new marketing and food processing activities, with technical business assistance and access to commercial loans and equity capital. The Albanian/American Enterprise fund and the Albanian Reconstruction Fund, sponsored by EBRD and the Italian government, have worked in the sectors of food processing and furniture.

The problems of forest management and production are being addressed by the Forestry Project of the Government of Albania financed by the World Bank with the FAO, the Italian government, the Swiss development agency. Its purposes are to calculate accurately the sustainable yield of Albania's forests and to assist in the development of forestry management to attain this level of production. The project includes components of restoration of degraded forest areas, determination of methods of conservation, and separation of commercial production from the regulatory functions in the management of forests. Specific project components include assistance to strengthen the capacity of the Directorate of Forests and Pastures in the Ministry, with training and assistance in administrative reorganization and management processes; the introduction of new technologies and methods in the field. This work has included the creation of National Forest Fire Management Strategy and Action Plan, and a Timber Marketing and Price Policy Study. The project has assisted in the drafting and adoption of 13 management plans. These include methods of reforestation, pre-commercial thinning of tree stands, and pest monitoring and controls. The thinning program has encompassed over 2,600 hectares at the end of 2001. Assistance is given to management of the protected forests, providing equipment to strengthen communications and training for personnel. Technical methods of managing the areas for combined firewood and fodder production and for erosion control.<sup>46</sup>

USAID has supported initiatives to create eight Agribusiness Trade Associations, allowing cooperative activities in securing production inputs, marketing products and gaining credits for farmers and farm support services. The eight ATAs involve: Horticultural Businesses, Poultry and Eggs, Olive and Edible Oils, Meat Products, Potato Seed, Fisheries, Flour Milling, Agricultural Equipment and Machinery. The eight are joined together in the Albanian Federation of Agricultural Trade Associations (AFADA). USAID reports that by early 2004, membership in the farmers associations has grown to 7,000 and in the agribusiness associations to 2,278. An important component of association activities has been the creation of three credit unions, the largest under the umbrella AFADA, with \$150,000 in loan funds available in early 2004. The Potato Seed Association has its own credit union with 208 members in 2004 and the Horticulture Business Association Credit Union has 148 members.<sup>47</sup>

Rural poverty and the impact of economic conditions on children, women and the elderly have been the subject of several initiatives by NGOs. For example, the Christian Children's Fund has assisted organization of pre-schools with spin off of parents' organizations, which have become networks for communicating public health, child care and protection, articulation of community problems.<sup>48</sup>

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<sup>46</sup> See *Forestry Project Albania*, <http://www.esteri.it>.

<sup>47</sup> IFDC (2004) *Economic Impact Assessment of USAID/IFDC Assistance to Albanian Agricultural Trade Associations*, project report, <http://www.dec.org>. See also IFDC (2002) *Building Foundations for Private Agribusiness Growth in Albania*, <http://www.dec.org>.

<sup>48</sup> See Harriet Epstein, (2004) *Assessment of Child Health and Protective Services*, report prepared for the Christian Children's Fund

## Rural poverty and land holding

Long term strategies for development of agricultural, forest and mountain areas continue to foresee demographic and social change. Numerous studies and surveys of the attitudes of rural residents have been carried out, and they are becoming the basis of new approaches in poverty reduction and sustained rural development.

The Ministry of Agriculture and Food has looked closely at the problem of fragmentation of the farm fields and the negative impacts on production and family income.

### Chart 8-2. Structure of Agricultural Land Holding, 2002

Source: Ministry of Agriculture and Food, Annual Report, 2002 at pg. 18.

Farm groups	Number of farms	Percentage
0.1-0.5 hectare	142,600	33.9
0.5-1 hectare	101,600	24.2
1-2 hectare	126,200	30.1
Above 2 hectare	19,600	11.8
Total farm units	420,000	100%

Based on these statistics, the Ministry has defined three groups of farms by their production capacities. First, the Ministry estimates that 21 percent of all farms are farms are insufficient to meet family subsistence needs. These farms produce cereals and livestock forage but they are located in remote areas and have no opportunity to link to markets. These farms are a primary source of migrating families. Second, farms that are providing subsistence for families with some potential to generate profits from sale of products constitute 64 percent of the total. These have a more mixed production, but remain dominated by cereal and livestock forage crops. Third, market oriented farms constitute 15 percent. These tend to be involved in vegetable, livestock and orchard/vineyard/olive production

In the aggregate, the Ministry has compiled statistics to show that the active use of cultivated land has declined since 1998 but there is more intensive use of the land, accounting for the increase in production of vegetables, milk, eggs and other crops.<sup>49</sup> The decline in cultivated land appears to have two causes. First, the out-migration of farm labor has left many farm fields unattended or minimally managed under informal arrangements with family members and neighbors. Second, farmers have abandoned low-quality fields, in particular terraced hillsides. In both cases, the derelict fields tend to be used for grazing without strict controls.

The policy of the Ministry, which reflects principles endorsed by United Nations Food and Agriculture Organization, and the World Bank, among others, is to assist the market oriented farms and the family farms with development potential to gain control of more land. This is foreseen initially by leasing and cooperative farming arrangements without direct efforts to induce farmers to exchange or sell their land.<sup>50</sup> It is recognized that at present most rural families intend to keep ownership of their land since other economic activities -- international migration, migration to the urban periphery -- are not yet permanent. Sales and other transactions involving farmland have also been hindered by the lack of an effective land tax, since there is no significant

<sup>49</sup> EU Stabilization and Association Country Report 2004, <http://europa.eu.int>.

<sup>50</sup> World Bank (2002) *Rural Development Strategy*, at pg. 33, paragraph 126.

carrying cost to holding land without active use and profit. Further, since there is substantial property transfer tax, this has discouraged formal, legal transactions.<sup>51</sup>

The reluctance of farm families to engage in any long-term arrangements -- sale, lease, exchange of fields -- has been confirmed in several studies in which farmers and their families have been interviewed. For example in a study of four olive-growing villages in the Vlora district, researchers from the Integrated Pest Management program found that all of the 200 farmers interviewed held their olive grove and other cultivated land parcels in ownership. None had subordinate forms of control -- leases or use rights -- and very few of them had registered their titles. None reported having engaged in any land transactions. Of the 200, only one had applied for and received bank credit. The farmers did not use their land as collateral both because many had not registered their title and because they considered the bank personnel to be corrupt.<sup>52</sup>

In the long term, it appears inevitable that young people will continue to migrate out of the village and, over time, will lose their emotional and social security ties to the land. In the short to medium term it appears that the best strategy may be to help families gain income from off-farm activities -- forestry, tourism, handicraft industries. These activities require the completion of the programs of forest and pasture land transfer and the evolution of stronger legal and economic mechanisms to guarantee families stable, long-term access to resources and clarification of their rights, responsibilities and costs.

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<sup>51</sup> World Bank (2002) *Rural Development Strategy*, at pg. 64, paragraph 239.

<sup>52</sup> IPM-CRSP (2002) *In-Depth Report on Activities 1993-2001*, report prepared for USAID, <http://www.dec.org>.

## Appendix 9. Inventory and transfer of state properties

The program of inventory and transfer of state properties to local governments reflects the policies of improved state management and decentralization of authority to local governments, which the national administration of Albania has elaborated in several domestic and international policy documents. In 2000, Albania became a signatory of the European Charter of Local Self Government.<sup>1</sup> The Council of Ministers has adopted the Strategy on Decentralization and Local Autonomy.<sup>2</sup> This strategy is a subordinate policy document to the National Strategy on Social and Economic development, in which the principle of decentralization is stated.<sup>3</sup> Decentralization of authority and the transfer of assets to municipal level governments is a key commitment of the government in its European Stabilization.<sup>4</sup> The basic principle of local government ownership of immovable property is stated in the law *On Local Self Government*, but implementation is relegated to separate legal acts.<sup>5</sup>

Two laws define the program of inventory of state land and its division between state and local governments. Law no. 8743, *On State Immovable Property*, defines the categories of lands and properties that remain in state ownership and the authorities and processes for their management.<sup>6</sup> Law no. 8744, *On the Transfer of State Owned Immovable Properties to Local Governments*, defines the process by which the properties are identified as eligible and then transferred to communal and municipal administrations.<sup>7</sup>

Law no. 8743 has created two categories of state owned properties. Public properties are lands, buildings and infrastructure objects, which "fulfill basic and undivided state functions." These include the coastal line and other lands along water bodies, lands with historical or archaeological significance, national defense installations, lands with natural resources, forests and pastures kept in state ownership and other infrastructure -- highways, bridges, etc.<sup>8</sup> Non-public properties include lands and immovable objects that are useful for agriculture, commerce, industry or housing or are otherwise not needed for state functions. These lands and properties have an "equal juridical regime with private property."<sup>9</sup> Law no. 8744 provides for the transfer of the public properties, which fulfill local government functions, and the transfer of most categories of the non-public lands to communal and municipal control.<sup>10</sup>

Under the Forestry Project has been developed the fourth national inventory of forests and pastures resources (the last inventory has been carried out in 1985), as well as the analysis of

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<sup>1</sup> See [www.conventions.coe.int](http://www.conventions.coe.int).

<sup>2</sup> See World Bank, *Albania: Decentralization in Transition*, Report no. 27885, February 2004

<sup>3</sup> Albania Council of Ministers (2002), *Progress Report for Implementation of the National Strategy on Social and Economic Development*; [www.keshilleministrave.al.gov](http://www.keshilleministrave.al.gov).

<sup>4</sup> European Union (2004), *Stabilization and Association Country Report, Albania*, <http://europa.eu.int>; European Union CARDS program (2001) *Albania Country Strategy Paper, 2002-2006*, at pg. 7, <http://europa.eu.int>.

<sup>5</sup> Law no. 8652 of 31 July 2000, *On the Organization and Functions of Local Government*, Article 8(II) paragraph 1 (the principle of ownership of immovable property) and Article 72 (referring implementation to separate laws).

<sup>6</sup> Law no. 8743 of 22 February 2001, *On State Immovable Property*.

<sup>7</sup> Law no. 8744 of 22 February 2001, *On the Transfer of State Immovable Property to Local Governments*.

<sup>8</sup> Law no. 8743, Article 2 and 3.

<sup>9</sup> Law no. 8743, Article 4.

<sup>10</sup> Law no. 8744, Article 3.

the status and trends in resource use across the country. The inventory provides the government with an invaluable tool to assist in planning for sustainable management of the forests and pastures and development policies. The project established a geographical information system (GIS) to support the forest management planning process. Agreement on how best to institutionalize, update and maintain the national inventory and the GIS need to be further elaborated.

The process of inventory of state owned land and immovable property is described in Law no. 8743 and the transfer of properties to the local governments is described in Law no. 8744. For administrative purposes, the two procedures have been combined. In order to oversee the tasks and set the standards, the Council of Ministers has established the State Committee for Inventory and Transfer of Public Property, a subdivision of the Ministry of Local Government. The state committee is charged with supervising the work of the commune and municipal administrations, which are charged with the responsibility to carry out the inventories and identify the properties that should be subject to transfer. The larger municipalities have set up specialized planning units to undertake this task.

The inventory and transfer of land and immovable property to municipal administrations involves a nine-stage process:

- The commune compiles the inventory of all state properties within its territory. This inventory is sent to the State Committee on Transfer of Public Property.
- The State Committee circulates this inventory among five ministries -- Agriculture and Food, Defense, Justice, Finance and Economy for their comments on the sufficiency of the list.
- If the ministries agree, the Council of Ministers gives preliminary approval of the inventory, and it is returned to the commune.
- The commune proposes the division of the properties on the inventory list between itself and the state. The divided list is sent to the State Committee.
- The State Committee circulates the proposed division to the five ministries plus Health and Education for their agreement or disagreement with the proposed transfers. Disputes are worked out and the divided list is returned to the State Committee.
- The State Committee prepares the draft decision on the division of the properties and returns the list to the commune.
- In the commune, the list is put on public display of the list for 90 days to receive objections or corrections.
- The division of properties is approved by the Council of Ministers.
- Registration of the immovable properties in the IPRS.

The law originally set a timetable of two years for the completion of the process, however, implementation has moved slowly. The State Committee for Inventory and Transfer of State Property was organized only in 2002. By April 2005 the third stage of preliminary approval of property lists has been achieved in 64 out of a total of 353 communes and municipalities. For eight of these, the work has been carried through the seventh stage. One small city, Kucove, reached the eighth stage of final approval in November 2004. The Council of Ministers approved the transfer to the Kucove municipal administration of 536 property objects -- most of which consist of urban public lands and spaces and infrastructure objects and their sites. Forests and pastures were not a part of the territory within the municipal boundaries.

Several reasons have been given for the slow progress. First, it appears that the State Committee has given priority to working with the ministries, clarifying their property claims and has delayed working with the local governments. On their part, many local governments have

been reluctant to push for the transfer of properties on which there has been deferred maintenance for many years.<sup>11</sup> Further delays have involved the lack of a cooperative relationship among the agencies with respect to access to property data -- in particular between the State Committee and the IPRS. Because of this, there appears to be a substantial flaw in the process. Many communes, municipalities and the State Committee are carrying out the inventories on the basis of data taken from the different ministries, not from the IPRS.<sup>12</sup> The rural land administration office records of the Ministry of Agriculture and Food have been transferred to the inventory working groups in most communes. Since these records were compiled prior to first registration, they do not contain the accurate boundary lines of properties, fixed and coordinated with survey points, or the code numbers assigned to insure linkage of property data to the maps.

By failing to make use of the IPRS databases, the communes and State Committee are spending unnecessary time, effort and resources. In the over 2,000 cadastre zones, where first registration has taken place, the lists of state properties (with their accurate sizes, boundaries and location codes) can be generated by simply downloading the computerized information. It appears that the IPRS has resisted transferring this data and the State Committee has refused to insist on its transfer.

The more important will be faced when the properties, approved for transfer, will be presented at the end for registration. There will be many discrepancies -- boundary line overlaps and gaps, inconsistent identification of owners, un-reconciled survey points -- and it will not be possible to register many of the properties without another process of resolving the differences. If, at that time, the state and municipalities assert the predominance of their boundary lines and state ownership rights over the registry data (including overlapping private properties) this will undermine the status of the IPRS as guarantor of civil law rights.

International development partners are providing support to several projects working with specific municipalities as part of the broader decentralization effort. The Decentralization Initiative of USAID is providing assistance to several "pilot" cities to reorganize their fiscal, budget, property management and service delivery systems. Support has been provided to the City of Tirana in carrying out aerial photography and mapping.

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<sup>11</sup> Urban Institute (2003), *Quarterly report on the Albania Decentralization Initiative project of USAID*, [www.dec.org](http://www.dec.org).

<sup>12</sup> See Urban Institute (2003), *Quarterly Report on the Albania Local Government Assistance Project*, prepared for USAID, [www.dec.org](http://www.dec.org).

## Appendix 10. Land and Property Disputes

As elsewhere, in Albania land and property disputes constitute a high proportion of the cases pending in the civil law courts. Most professionals estimate that half the case load involves land and property issues and one study of the Tirana District Civil Court in 1999 found that 866 out of 1,920 pending cases involved land issues.<sup>1</sup> There is considerable evidence as well that local village elders, other municipal level officers, religious leaders and NGOs are called upon to mediate land and property conflicts when they occur between family members or neighbors.<sup>2</sup>

There do not appear to be any recent comprehensive studies of the volume and types of cases, handled by the civil courts, or of the outcomes of these cases. Professionals in the system talk about the delays, procedural complexities, and inadequate experience of the judges, court staff and lawyers in handling these cases. Expert evaluation of the court system has found many inadequacies in judicial training and in the administrative and expert support made available to the judges.<sup>3</sup> There appear to be inconsistent rulings on similar cases and there are allegations of corruption. Court decisions, which result in changes in land and immovable property rights, are not often registered. The statistics of the IPRS show that in 2002, only 544 court documents of all types were registered (including 220, which related to expropriation of highway rights of way in Gjirokaster). In 2003, the total of court documents registered was 431.<sup>4</sup> There have been problems in getting court orders executed by the bailiff services. To remedy these systemic problems, there have been a several projects, working with the courts to improve case management, provide training for judges and staff; upgrade legal education, combat corruption and streamline the procedures of bailiffs.<sup>5</sup> None of the projects have a specific focus on the caseload, dealing with land and property.

In parallel with the projects, assisting improvement of the courts, there has been some activity directed toward the creation of non-judicial mediation and arbitration. Some international consultants have suggested that a specialized land and immovable property court or a formal structure of mediation for land and property cases.<sup>6</sup> This has not been pursued but work has gone forward in setting up a non-specialized system of commercial and civil mediation. With European Union and Danish Government assistance, mediation centers have been established in the major cities with the Albanian Foundation for Conflict Resolution.<sup>7</sup> To accommodate this

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<sup>1</sup> Singer, Norman (2001), Consultant's Report, prepared for USAID, July 4-29, 200.

<sup>2</sup> See Bashkim Deliallisi (2002), "Drejtuesit e pushtetit vendor -- pjesemarres ne vepimtarite ndermjetesuese" (Local Government Authorities involved in Mediation Process) in Pajtimi (Journal of the Albania Foundation for Conflict Resolution), vol. 2, no. 20.

<sup>3</sup> See American Bar Association CEELI program (2004) *Judicial reform Index for Albania*, [www.abanet.org](http://www.abanet.org). Also see World Bank (2001), *Legal and Judicial Reform Project, Project Appraisal Document*, no. 19915.

<sup>4</sup> IPRS annual reports on applications filed in IPRS and hypotek offices.

<sup>5</sup> The major projects have been within the European Union CARDS; see the *European Union Stabilization and Association Country Report for 2004*, <http://europa.eu.int>. USAID has also supported judicial reform and court improvement through its Pilot Court Administrative Reform Project and the American Bar Association CEELI programs of lawyer and judges training; see [www.usaidalbania.org](http://www.usaidalbania.org).

<sup>6</sup> See Harold Lemel, (2005) proposing a mediation procedure to handle contested restitution cases.

<sup>7</sup> See the website of the Albanian Foundation for Conflict Resolution, [www.afcr-al.org](http://www.afcr-al.org). Also Albania Commercial ADR Centre Project (2004) *Final Report (MEDART)*, Gowlings Consultants.

system, a law *On Mediation* has been adopted.<sup>8</sup> So far, however, the centers are not being used. One explanation for the lack of cases is that the law does not give the judges a clear power to refer cases to mediation and judges have been unwilling to do so.<sup>9</sup> Another reason is that few business deals are concluded with formal contracts in which mediation or arbitration is specified. At a less formal level, however, the Albanian Foundation for Conflict Resolution has worked with village elders, local communal officers, and local priests and mullahs, who are called upon to mediate family and neighbor disputes. These disputes frequently involve issues of land use, property borders and intra-family property rights. Similarly, the Foundation has provided a dispute resolution service in the Registry Organizational Improvement project, intervening in problem cases that have arisen during the public display period in first registration. None of the problems encountered in registration have risen to the level of requiring formal mediation, however, for small scale disagreements over border lines and the identification of family members on the registry lists, the AFCR has played a constructive role.

In order to clarify the needs of the legal system in handling land and property related disputes, it is helpful to consider the types of disputes that arrive in the court system. The cases appear to encompass all of the following:

- Cases contesting grants of land and property, or refusal, under the original programs of privatization and distribution (administrative law);
- Cases brought by former owners, claiming restitution, alternative grants of property or compensation (administrative law, civil property law, constitutional and basic human rights)
- Cases involving disputed claims to ownership of land and property and cases involving alleged unauthorized occupancy of property (civil property law);
- Cases alleging non-fulfillment or violation of business agreements involving land and other immovable property units (civil contract and civil property law);
- Cases in which family members are disputing rights to inherit, divide or occupy land and other properties (civil property and family law);
- Cases involving boundaries of land parcels, irrigation and drainage issues, and other neighbor-to-neighbor disputes (civil property, land use and natural resource law);
- Cases contesting the outcome of various administrative actions such as land use or construction permits, taxation (administrative law).

Despite their variety, these cases encompass the kinds of legal issues and factual situation that the civil law, traditionally, has dealt with. Given the fact that Albania is not a large country with an economy of highly specialized technical industries or services, its judiciary should not be hard pressed to handle these cases. While mediation and arbitration services can play a role, such initiatives run the risk of dissipating resources and creating rival institutions that will compete for "customers." More important, non-judicial tribunals tend to emphasize the technical aspects of cases -- procedures, measurement and maps, valuation methods -- rather than place the focus on the fundamental issues of fair dealing, equity, good neighbor relations, and civil behavior. It is these elements that need to be strengthened in a legal system, which became highly distorted in

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<sup>8</sup> The law no. 9090 of 2003, *On Mediation in Dispute Resolution*, authorizes the creation of such systems. See Jetmir Voka (2004) "Mundesite e ndermjetesimit gjyqesor (Judicial Mediation Opportunities) in Jete Juridike (Journal of the School of Magistrates) No. 4, 2004.

<sup>9</sup> Albania Commercial ADR Centre Project (2004) *Final Report (MEDART)*, Gowlings Consultants, at pg. 13.

an era of Communist law. Thus, strengthening the courts and helping them to handle the cases, efficiently and with consistent outcomes, appears to be the priority.

Training of judges, lawyers and staff in the substance of civil property law, land and property transactions and registration is a particular need. At present, the Faculty of Law of the University of Tirana does not offer courses on these subjects, despite the fact that they are fundamental components in the system of civil law. The Magistrates' School also has not made the land and property issues a routine part of its judicial training, although it has conducted programs, sporadically, on these issues. It does appear necessary to provide the judges with a higher level of support so that they can deal efficiently with the technical aspects of land and property cases in the course of considering the broad spectrum of issues. Thus, assistance in providing the courts with ready access to specialized staff or contracted experts in valuation, survey and map interpretation, soil, water and other environmental measurements would be an important contribution.

## Appendix 11. Restitution and Compensation of Former Owners

The principle of restitution and compensation to families, whose property was confiscated in the Communist era, was added to Albanian law in 1993 after the programs of farmland distribution and housing privatization were already underway.<sup>1</sup> Thus, the laws had to deal with the problem of resolving conflicting claims between new owners (those who gained rights under post 1991 privatization legislation) and former owners. The initial restitution/compensation laws provided for the grant of alternative land or financial compensation, rather than restitution of the actual property, for several categories of land. This included all agricultural land, already subject to distribution under Law no. 7501, *On Land*.<sup>2</sup> For housing, the law allowed the restitution of land with the house, if it existed without substantial change since 1945. In such cases the rights of persons in occupancy would be adjusted either by granting them a lease to continue possession, or by organizing alternative housing with assistance from the state. Urban land could also be given in restitution, subject to separate ownership of a building standing on it.

The provisions in the 1993 Restitution and Compensation laws proved unsatisfactory because a majority of the families claiming restitution were to be assigned an alternative land grant or financial compensation.<sup>3</sup> In the economic turmoil the government was unable to specify either the land, which would be available for alternative grants, or the value or type of financial compensation. The situation became more complex because, in some villages in the hilly and mountainous areas, former owners were successful in securing a division of agricultural land based on the pre-1945 boundaries. In other peri-urban areas, however, rural migrants occupied and built on lands, which were subject to restitution. These spontaneous actions with contrary results for former owners called into question the legitimacy of the exemption of agricultural land. Meanwhile, proponents of restitution also began to focus their attention on the tourism zones, as potential areas from which grants of alternative land could be drawn. In the end, the compensation process was never implemented and former owner claims remain unfulfilled.

The debate over the rights of former owners remained unsettled during the period in which the Constitution of Albania was being formulated. When the new Constitution was approved, by referendum on 22 November 1998, it contained strong provisions, which guaranteed rights of private property.<sup>4</sup> Many persons interpreted these provisions to mean that full restitution or full compensation had to be given for all property owned prior to 1945. Other persons did not read this guarantee as broadly. On this question, reference was made to the European Convention on Human Rights, which had been ratified by the Republic of Albania, and to the case law of the European Court on Human Rights (ECHR).<sup>5</sup> This court had ruled that there is no absolute right

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<sup>1</sup> Law no. 7698 dated 15 April 1993, *On Restitution and Compensation of Former Property Owners*; and Law no. 7699, dated 21 April, 1003 *On Compensating Former Owners for the Value of Agricultural Land*.

<sup>2</sup> Law no. 7501 of 19 July 1991, *On Land*.

<sup>3</sup> See Centre on Housing Rights and Evictions -- COHRE (2002), *Albania: Resolving the Question of Land and Property Restitution and Compensation*, report prepared for the World Bank and OSCE, at pg. 7

<sup>4</sup> Article 41 states: "1. The right of private property is guaranteed. 2. Property may be acquired by gift, inheritance, purchase, or any other classical means provided by the Civil Code. 3. The law may provide for expropriations or limitations in the exercise of a property right only in the public interest. 4. Expropriations or limitations of a property right that amount to expropriation are permitted only against fair compensation. 5. In the case of disagreements related to the amount of compensation, a complaint may be filed in court."

<sup>5</sup> The references to the case law of the European Convention on Human Rights are taken from the Centre on Housing Rights and Evictions (COHRE) (2002) *Albania: Resolving the Question of Land and Property Restitution and Compensation*, report prepared for the World Bank and OSCE.

to restitution and that each State has a wide margin of discretion in addressing the appropriate level of compensation and the manner of assessing the value of property.<sup>6</sup> From the European perspective, therefore, there did need to be a guarantee of full compensation in all circumstances, because legitimate objectives of the public interest could call for an amount, which is less than full market value.<sup>7</sup>

In order to determine the scale of compensation, reference also was made to cases of the European Court, in which property value has been calculated to compensate the interference with property rights. The court's approach in these cases had been based on the 'market value,' which could have been negotiated in a sale as of the date of the wrong.<sup>8</sup> In applying this valuation method, the court required two conditions. First, it ruled that, in determining the compatibility of a certain act by a State with regard to land and property issues, any interference in the exercise of these rights must strike a *fair balance* between the aim sought to be achieved and the nature of the act. The key question was whether the interference would achieve a fair -- proportional -- balance between the rights of the victim and the general interest.<sup>9</sup> Second, each claimant to restitution or compensation must have the right to *an independent and impartial tribunal* that would determine its claims in a speedy and effective way. This guidance from the European Court was influential in the constitutional debate.

Due to the social unrest that was building against the state with regard to restitution/compensation issues, the drafters of the 1998 Constitution included Article 181 which required Parliament, "by the end of November 2001" to enact "laws for the just regulation of the various matters related to expropriations and confiscations that took place before the approval of this Constitution." Just prior to the expiration of the Constitutional deadline in November 2001, the Council of Ministers approved amendments to the two main restitution and compensation laws. They provided for a special Parliamentary Commission to review the draft amendments (the "Ad Hoc Commission"). Its work was supposed to be completed by the end of November 2002. However, the efforts of both the government and the Ad Hoc Commission were handicapped by the failure to approach the complicated issue in an analytic way. The commission failed to identify the problems under the legislation in force and it did not provide an accurate or complete description of the situation. In particular, there was no inventory of the state lands, which would be available for compensation. There was no consideration of how to fund monetary compensation or of how to determine the values of agricultural and urban lands, which could not be restituted. No mention was made of the villages and communes, where the land distribution under Law no. 7501 was not implemented.

From the perspective of the international community, the Organization for Security and Cooperation in Europe- Presence in Albania (OSCE-Presence) has taken the lead role in addressing the property restitution and compensation issue. With its assistance in 2003, the government has organized a new framework for considering the questions of restitution and compensation. A key decision was to include the three main political parties in the drafting process to revise the law *On Restitution and Compensation*. A Technical Expert Group (TEG) with 2 international and 5 Albanian experts was set up to draft the new law, using the draft amendments presented by the Council of Ministers and an opposing draft law submitted on behalf

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6 Jonas v. Czech Republic App 23063/93, E ComHR; Nohejl v. Czech Republic, App No. 23889, EurComHR).

7 Papachelas v. Greece (1990) 30 EHRR 923, EctHR.

<sup>8</sup> See Dinah Shelton (2000) *Remedies in International Human Rights Law*, Oxford Press, at pg. 24.

<sup>9</sup> Centre on Housing Rights and Evictions -- COHRE (2002), *Albania: Resolving the Question of Land and Property Restitution and Compensation*, report prepared for the World Bank and OSCE, at pg. 13.

of former owner interest groups as the basis. The Albanian experts included representatives of the Democratic Party, the Socialist Party, and the Republican Party. The TEG analyzed available data, met with the various interest groups and produced a draft law. The revised law, no. 9235, *On Restitution and Compensation of Property*, was approved after discussions in the Assembly and with some changes.<sup>10</sup>

Law no. 9235 encompasses the restitution/compensation of immovable property expropriated, nationalized, or confiscated with legal, sub legal acts, criminal decisions of courts or taken in any other unjust manner after 29 November 1944. It sets forth the procedures on which the restitution and compensation of property will be based. The law no longer prevents the king or religious institutions from claiming restitution/compensation of property and the 10,000 square meter limitation on restitution of urban land, contained in the 1993 law, also was eliminated. The law did not change the exemption of agricultural land, distributed under Law no. 7501 and the other post-1991 agricultural land privatization laws. Another provision of the new law, limit compensation of agricultural land to 60 hectares, was proposed and approved at the last moment without a full debate.<sup>11</sup>

Law no. 9235 establishes the State Committee on Restitution and Compensation of Property (State Committee) and 12 Local Commissions in each region (qark) to adjudicate restitution and compensation claims. An administrative appeal process has been added and a new valuation method for compensation, based on current market value, has been approved by the Assembly. The law requires all new claims to be submitted 15 September 2005, and the request to review existing claims must have been filed by 15 March 2005. The intention of the law is to allow one year and six months, respectively, for expropriated subject to compile and submit documentation and requests. However, the implementation of the law is now behind schedule and several deadlines have passed. The failure to appoint the Local Commissions and hire staff at the State Committee level within the deadlines defined in the law means that the institution is not prepared to serve the citizens as required. An amendment to the law was presented to Parliament in April, 2005 to extend the deadlines by one year but the amendment has not yet been placed on the Parliamentary Committee agenda for review.

In addition to the slow start of the Local Commissions, there is further uncertainty over the provisions of law no. 9235. Two petitions have been presented to the Albanian Constitutional Court requesting that the full law or certain provisions be declared unconstitutional. In February, 2005 the Constitutional Court heard a petition from the "Property with Justice" Association to invalidate the law on the basis of its continuing exemption of agricultural land restitution. A second petition was filed by the "Renter's Association," representing people who currently occupy villas and other properties, owned by former owners. They state that the Law will make them homeless (a violation of the constitutional right to housing) because they will be required to vacate these properties within two years. The hearing on this issue was held in April, 2005. No decision from the Constitutional Court has been issued for either petition as of the date of this report.

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<sup>10</sup> Law no 9235 of 29 July 2004, *On Restitution and Compensation of Property*.

<sup>11</sup> As noted in the previous section, ECHR allows a government to limit restitution/compensation. In this case it was the form in which the limitation was added that is problematic, at the last moment and without prior discussions, rather than the substance.

## **Valuation Methodology**

One of the most important of the required implementing regulations for the new Law no. 9235 is the methodology for valuation of land in order to calculate compensation. This methodology must be drafted by the State Committee and approved by Parliament. Despite the fact that no inventory has been made of available state land for alternative grants, it is likely that there are few areas of good land that have not already been distributed. In rural areas, generally, the state now holds only the remote mountain lands and the refused agricultural fields. Grants of land from these stocks are unlikely to satisfy the former owners. It is expected that cash payments will be necessary to fulfill their claims.

Applying the rule of proportional balance, however, the method used for calculating the value of the land and the corresponding compensation should be considered from the point of view of its impact on the state budget. The state budget will bear the burden in two ways: first direct payments to former owners will be required during the 10 year period, defined in the law, for completing the compensation program. There will also be lost revenues to the state, which might come in from the sale of the properties, which will be given as alternative land grants.

The State Committee has made available for review the draft of a valuation methodology. It is controversial because the prices that result from its application are extremely high; up to Euro 700/m<sup>2</sup> in urban areas and Euro 30,000/ ha for agricultural land. There has been no independent review of the methodology nor has there been a calculation of how much money the state will be obligated to pay over the 10 year payment period as a result of the methodology. The Chairman of the State Committee initially expressed willingness to submit the draft methodology to an independent review, which has been hired under the proceeds of the ASP financed by the WB. The draft methodology has been the subject of discussion by two Parliamentary Committees -- the Committee On Production Activities, Trade and Environment and the Committee on Economy and Finance. Both committees have been reluctant to suspend discussions, since this could prevent the completion of the work prior to the elections, scheduled for summer, 2005.

Rough calculations can be made of the volume of cash compensation, using the data about claims made under the 1993 law and the current prices for land, realized by applying the draft valuation methodology. These calculations indicate that cash compensation could reach into the hundreds of millions of dollars. If, as appears likely, the valuation methodology is approved prior to the Parliamentary recess in May 2005, the state will be obligated to finance a very high compensation package. It is unrealistic to expect the Albanian state budget to support such a financial burden. However, the process used to debate the restitution and compensation questions has not addressed this issue.

## **Restitution/Compensation and Tourism Development**

The restitution and compensation questions have affected the potential for tourism development in two ways. First, in several areas of the coast, land ownership is still disputed between the claims of agricultural landholders, under Law no. 7501, former owners, and the state, as holder of lands, classified as forest or pasture. Second, since the state lands in these areas are among the few state holdings that are attractive as potential alternative land grants, there is great interest in fixing the principle that these areas will be made available to former owner claims.

Restitution/compensation, therefore, will be of high relevance in both the process of tourism sector planning and in the formulation of coastal zone management plans.<sup>12</sup> will have an impact on the World Bank Integrated Coastal Zone Management and Clean-up Project (ICZMCP).<sup>13</sup> The policy of the government to avoid restitution of forests and pastures along the coastline has resulted in local opposition to much of the development in those zones. With respect to the main Project area, the Vlora - Saranda coastline, the following are some observations on land ownership and the local population's disputes with the government:

1. Each village is unique in how it has or has not implemented the land reform process so it is very difficult to make broad generalizations. The majority of villages seem to have reached a consensus that Law no. 7501 is not acceptable given the peculiarities of small-holdings, absence of large landlords, perspective of tourist development rather than agricultural production and for historical reasons. In some places such as Himare, up to 3 different Local Land Commissions have been set up over the past 14 years resulting in 3 different sets of land division documentation.
2. The presence of "new" families, families that were transferred to the area under the socialist regime to work on the cooperatives, complicates the dynamics within the village. The villages seem united in the belief that complete restitution is the only solution and seem very reluctant to compromise, especially with regard to the 'new' families that have formal rights under Law no. 7501. The reluctance to accommodate 'new' families will complicate the possibility of finding a compromise solution to the issue.
3. Local citizens claim that numerous abuses have been done with the land distribution and privatization process. Although individual cases have not been researched, there appears to be evidence of several types of actions. First, some lands previously classified as forest or pasture (subject to restitution) have been reclassified as agricultural (exempt from restitution but subject to distribution under Law no. 7501). Second, the restitution committees have simply not processed some applications. Third, court decisions -- *vertitim e faktit* -- have been issued to grant land to persons without former ownership claims. Fourth, state agencies (such as the Defense Ministry), which have had jurisdiction over some lands and structures, have taken actions transferring rights to persons, inconsistent with former owner claims.
4. In 2004, the village of Palas implemented a local initiative where the village is setting up a new Land Commission and issuing new ownership documentation based on ancestral rights and historical boundaries. Most villages have documents from 1957-1959 that show the ancestral land parcels each family 'gave' to the cooperatives. Based on this documentation, Palas is issuing new *Tapis* (land allocation documents). However, it is unlikely that this new division will be approved by central government institutions.
5. First Registration is complete in only 1 village, Qeparo, while all other contracts had to be cancelled under the former USAID Land Registration Project. The Qeparo Village Elder claimed that 93 percent of the population is happy with the Law no. 7501 land division process and subsequent First Registration but a group of villagers disputed the statistic. The villagers also highlighted the use of force by masked police that were sent to Qeparo to subdue the unrest over First Registration activities in 2003.

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<sup>12</sup> These will be the subject of the World Bank Integrated Coastal Zone Management and Clean-up Project (ICZMCP),

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Thus, it is clear that restitution/compensation issues must be resolved in the area and the local government and population must be active in the development plans, otherwise opposition to the ICZMCP and other development initiatives will persist. The potential for violence is real, as witnessed by the March, 2005 unrest in Nivica/Kakome Bay area.

## Appendix 12. Informal Subdivisions and Illegal Buildings

Illegal buildings and informal subdivisions of land have occurred in areas all over Albania as single buildings constructed along highways, as housing and other facilities on land outside the yellow lines of villages and as concentrated urban development on the periphery of cities and in some coastal tourism zones. Most often, such construction has taken place without adequate sewers, water lines, access roads and other essential infrastructure. The concentration of such buildings can lead to environmental damage and health risks. Thus, addressing the problems of informal settlements and illegal construction has been a high Government priority. Several projects have worked in specific peri-urban neighborhoods in an effort to determine cost effective ways of retroactive infrastructure installation and to make possible the legalization of citizens' rights of occupancy and use.

The major initiative to address the problem of illegal settlements has been the adoption of Law no. 9304, *On Legalization and Urban Planning of Informal Zones*.<sup>1</sup> This law provides the procedure by which the informally settled areas can be re-designated as urban zones, thus allowing the persons who have constructed housing and other trade and service buildings to legalize them. The law, therefore, envisions a procedure with three parallel elements:

- re-planning of the informal zone to insure its proper functioning as an urban district, with necessary infrastructure;
- bringing the existing buildings into compliance with construction and land use standards and legalizing them under the administrative law; and
- settling the rights of the persons occupying the land and buildings so that they achieve compliance with the civil law.

The law outlines a procedure in which municipal and state agencies must take actions, simultaneously with actions of the private parties, in order to bring about all three elements of legalization. The process is illustrated, with its time periods from the effective date of the law, in the following chart:

**Chart 12-1. Procedure for Legalization of Land Parcels and Buildings in Informal Zones**

Actions by citizens	Actions by administrative bodies	Time
1. Citizens submit forms self-declaring their illegal land and buildings		3 months
	2. Local government reviews the declarations and submits a request to the national Territorial Adjustment Committee (TAC) to include the properties in legalization.	6 months after the deadline for citizen submission
	3. TAC examines the requests and decides (a) on the designation of the urban zone and (b) on whether an urban study is needed for the zone.	

<sup>1</sup> Law no. 9304 of 29 October 2004, *On Legalization and Urban Planning of Informal Zones*.

	4. Local government prepares the draft urban study and local Territorial Adjustment committee approves	6 months from date of zone designation
	5. National TAC approves the urban study.	4 months
	6. Local government demolishes any buildings that are standing within areas for streets and public facilities, in accordance with the urban study.	
7. Citizens prepare the technical and legal documents for submission of applications to the local government. They reach agreements with the owner of the land (state or private), on which their buildings stand.	7. National TAC invites citizens to submit applications to legalize their buildings and land parcels within the zone.	One year
	8. When conditions are fulfilled by the citizen (agreement with land owner reached), the local government issues the legalization permit to the citizen.	
9. Citizen registers in IPRS the legalization certificate and the property agreement (purchase/sale contract, lease, etc.)		

As outlined in the law, this procedure appears to make possible the legalization of many thousands of existing houses and land parcels. The law took effect in January 2005 and when the deadline date of March 24 was reached, citizens had filed 54,000 self-declaration applications. These constitute 60 to 70 percent of the estimated 90,000 properties eligible under the law. There is evidence that some people failed to file as a form of political protest and others felt that their properties should not be classified in an "illegal" category because they have claims based on restitution or on eligibility under the land distribution, housing or privatization laws. Interestingly in at least one district of Korce, the submission of applications exceeded 100 percent because people outside the designated informal zone hope to be made a part of the program.

In a number of the zones, based on the received applications, teams of professionals have begun the technical tasks of preparing the documentation for the approvals of the zones and the urban studies. The professionals expect a mixed outcome, because the existing compilations of base data vary in the different zones. In some zones, there have been past projects in which surveys and other base mapping has taken place. In these zones, the technical tasks can be accomplished within fairly short time periods, given by the law. An example of the technical tasks that will be encountered is the following: In the area of Kaneta on the periphery of Durres, citizens have submitted more than 1,000 self-declaration applications, which state the location, size and boundaries of their land parcels and buildings. Since this area was the subject of first registration in the USAID project in 2004, there exists a survey map of the zone with all properties accurately measured and plotted. The data on the self-application forms can easily be verified and corrected against the registry map. In other zones, without a base survey map, the task will be more difficult and the result will be less accurate.

A second issue that is critical to the outcome of the process is the level and mode of payment that will be required for citizens to gain their land rights. The law specifies three alternatives:

First, if the land is owned by the state, then the citizen will pay the market value to buy the ownership, either in a one-time payment or in installments (in accordance with a Council of Ministers authorization). Alternatively, there may be a lease arrangement with periodic rent payments.

Second, if a private party is recognized as the legal owner, then the citizen must negotiate to work out an agreement to purchase the land or lease it. These negotiations are likely to vary based upon whether the citizen, now on the land, had a direct agreement with this owner, had an agreement with an earlier occupant in a "chain" of transactions, or was occupying the land in a hostile relation to the owner.

Third, if the citizen occupant and the private owner are unable to reach an agreement, then the law allows the state to intervene, in effect, buying out the legal owner at a price calculated by the "restitution compensation" methodology (that is, price based on the land value without its urbanization). The state then will sell the land to the citizen occupant, who must pay the current market value (as urbanized).

A further issue of cost, likely to affect the success of legalizing citizen land holdings, involves the levels of technical work, surveys and administrative fees that citizens will be required to pay. The law makes clear that the citizen will be responsible for submitting "complete technical and legal documentation" in accordance with forms approved by the Council of Ministers.<sup>2</sup>

It must be recognized that the law *On Legalization and Urban Planning of Informal Zones* does not deal directly with the problems of inadequate infrastructure and integration of these informal zones into the urban system. It only provides that an urban planning study will be carried out and that, upon its completion, the municipal government will take the necessary actions to remove buildings and structures in the way of public facilities. This is a significant weakness in the process because the obsolete methodologies of urban planning address spatial issues and provide no mechanisms for financial and capital planning related to infrastructure. Elsewhere in the world, programs of urban "redevelopment" usually contain a component by which the gains in the value of land and property, realized by the permitted "urbanization," are divided. The private property owner or citizen occupant is allowed to benefit from the property value appreciation as an incentive for his/her participation in the scheme. At the same time, some of the value gain is transferred (by a tax or user fees) into a fund that pays for the infrastructure, needed to rehabilitate the zone. Usually, the infrastructure costs are paid immediately from borrowed funds, and the tax or user fees, collected in the future from the property owners, pay off the principal and interest of the loans. This element is missing from the Albanian law and it will not be supplied by the urban planning process.

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<sup>2</sup> Law no. 9304 of 28 October 2004, Article 7. Earlier drafts of the law made reference to the responsibility of the citizen to pay administrative fees. This reference was dropped from the final version.

## Appendix 13. Taxation of Land and Property

Land and property taxes have been envisioned as potentially significant sources of revenue for local self-government, but they have not yet played an important role. Law no. 7805 of 1994 initially authorized taxation of land and buildings on the basis of a fixed rate per square meter of building and hectare of land by use category. It also authorized a tax on transactions in which ownership of land would be transferred. However, taxation of land on the basis of this law was later exempted.<sup>1</sup> Similarly the taxation of agricultural land was suspended. Based on the 1994 law, revenue from the tax on buildings was divided between the national government, which kept 40 percent and the municipalities.

In the consideration of the laws on local self government, the question of land and property taxation has been a significant issue. Amendments to Law no. 7805, adopted in 1999, transferred the buildings tax to the municipalities.<sup>2</sup> In 2002, local taxation was fully revised with the adoption of a new law *On the System of Local Taxes*<sup>3</sup>. It transferred into the control of municipal level governments four categories of land and property related levies:

- Tax on immovable property, including the taxes on buildings and the tax on agricultural land;
- Tax on hook-up of new construction to infrastructure systems;
- Tax on transfer of the right of ownership of immovable property.

More recently, the law *On the Value Added Tax* has been amended to provide that, after December 31, 2005 commercial and industrial buildings (not housing) will be subject to VAT when they are sold.<sup>4</sup> The VAT will not be levied against rent payments in any building.

Implementation of these taxes by local departments of finance has been slow and unevenly applied. The Department of Taxation in the Ministry of Finance reports that for 2003 and 2004, insufficient revenue has been collected for either the land tax or the building tax, presumably because there is no longer any national revenue being collected.<sup>5</sup> There are municipalities that started the collection of the property tax. During 2004 and 2005, the Municipality of Elbasani established a tax of US\$ 5/year per property. It is considered a good start but at the same time there is a long way to go through. A family that has a flat of 65 m<sup>2</sup> pays the same amount as a family that has a villa. The completion of the first registration of all properties will create a good base for a fair process of property taxation. The real property transaction tax is levied uniformly across the country with collection by the IPRS at the time of registration of property transfers. However, citizens and enterprises avoid this tax by failing to register their transactions or by structuring them as subordinate agreements (contracts, leases) rather than transfers of ownership. This is part of a widespread pattern of tax evasion by means of informal transactions.<sup>6</sup>

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<sup>1</sup> Law no. 7805 of 16 March 1994 modified by law no. 8344 of 13 May 1998.

<sup>2</sup> Law no. 8344 of 13 May 1998, *On Changes to the Law no. 7805 On Taxation*.

<sup>3</sup> Law no. 8982 of 12 December 2002, *On the System of Local Taxes*.

<sup>4</sup> Law no. 7982 of 27 April 1995, *On the Value Added Tax*, Article 20.

<sup>5</sup> Website of the Ministry of Taxation, [www.tatime.gov.al](http://www.tatime.gov.al).

<sup>6</sup> See Klarita Gerxhani (2004) *Tax Evasion in Transition: Outcome of an Institutional Clash (Testing Feige's Conjecture in Albania)*, *European Economic Review*, Vol. 48 at pp. 729-754.

In 2003, the tax on agricultural land was revived but the European Union CARDS evaluation has reported that its implementation is limited because of difficulties in determining the ownership of land.<sup>7</sup> Other weaknesses in the local land and property taxes appear to lie in the methods of their valuation and the persistence of legal exemptions.<sup>8</sup> Accurate valuation of property is hampered by the lack of information about market sales prices and rents, insufficient parameters for differentiating properties, and a lack of reliable cadastre data.<sup>9</sup>

To illustrate the situation of local revenues derived from the land and property related taxes and fees, the following are revenues reported by the City of Tirana for 2004.<sup>10</sup>

**Chart 13-1. City of Tirana, Selected Categories of Revenue, 2004**

Source: [www.tirana.gov.al](http://www.tirana.gov.al).

Category	Revenue (lek)
Total revenue from all sources	4,698 mill
Revenue from all local taxes	2,997 mill
-- taxes paid by owners of property	300 mill
-- taxes on real property transactions (change ownership)	75 mill
-- taxes on hook up of utility services for new buildings	900 mill
Non tax revenue	539 mill
-- fees for registration of construction permits	42 mill
-- fees for urban planning studies and permits	20 mill
-- revenue from grants of land parcels and buildings	20 mill
Revenue transfers from state budget	1,161 mill

The tax on land and property, which is levied against non-housing objects only, yields only about \$3 million and is less than 5 percent of the total city revenue and 10 percent of revenue from all local taxes. The tax on property transactions yields under \$750,000. This figure appears to be very low in light of the reported values of city land, buildings and apartments. It can be contrasted with the more substantial level of revenue from hook-up fees. The disparity is another indicator of the way in which land and property transactions are taking place by informal methods.

Among the internationally-assisted projects, the European Union CARDS program has made improvement of tax collection and budgeting one of its priority components. The emphasis has been on assistance in training, administration and installing computers of the Direct Tax Administration at the national level, and specific assistance to local government administrations has not been reported.<sup>11</sup> Similarly, DFID has provided assistance to the national tax

<sup>7</sup> European Union CARDS Programme (2004), Stabilization and Association Report 2004, Commission Staff Working Paper on Albania, at pg. 17, <http://europa.eu.int>.

<sup>8</sup> See the 2004 study of Albanian local government, Decentralization in Transition, the World Bank report no. 27885, Part VI, [www.worldbank.org.al](http://www.worldbank.org.al).

<sup>9</sup> See World Bank (2004) Albania: Decentralization in Transition, report no. 27885, at paragraph 51.

<sup>10</sup> See web site of the Bashkia of Tirana, [www.tirana.gov.al](http://www.tirana.gov.al).

<sup>11</sup> European Union CARDS Programme (2004), *Albania Country Strategy Paper, 2002-2006*, European Community Directorate of the Western Balkans, <http://europa.eu.int>.

administration.<sup>12</sup> USAID is providing assistance to four municipal administrations in reorganizing their budget and finance departments in the Local Government Assistance Project.<sup>13</sup>

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<sup>12</sup> See [www.tatime.gov.al](http://www.tatime.gov.al).

<sup>13</sup> Urban Institute (2003), Quarterly Reports on the Albania Local Government Assistance Project, prepared for USAID, [www.dec.org](http://www.dec.org).

## Appendix 14. Mortgage and Project Finance

Up to the present, mortgage lending in Albania has been at a very low level. From the data on users of the IPRS, there are shown 4,900 mortgages registered in 2003 and only 518 in the first eight months of 2004.<sup>1</sup> Most of these mortgages are recorded in the urban hypotek, confirming other evidence that these mortgages involve apartment sales.<sup>2</sup> There is no evidence of rural land made subject to mortgage.

Some commentators attribute the low mortgage lending to the weakness of the banking system and the limited ability of the business sector to absorb capital.<sup>3</sup> This situation may be improving, as one recent evaluation has stated.<sup>4</sup> In the housing sector, the business magazine Monitor has reported that apartment mortgages equal to 60 percent of property value and up to 100,000 euros are available with a payback period of five to 15 years.<sup>5</sup>

Other factors appear to play a role in limiting mortgage lending. There is no law on mortgages, thus the provisions of the Civil Code on "pledge" serve as the legal basis of any collateral agreement. The procedures for foreclosure are also cumbersome, with a process that can stretch over several years' time.<sup>6</sup> An additional problem, cited by bank representatives is the difficulty in dealing with the bailiff's office to execute a court decision on foreclosure and vacating the property.<sup>7</sup>

In this context, project developers in Albania have devised practical strategies. Typically, the developer of an apartment house or office building makes an initial "deal" with the owners of land to assemble the building site. The developer makes a contractual promise to transfer (at the project's end) ownership of a certain number of apartments or office suites to each landowner. When the construction permits are issued, the developer "pre-sells" the apartments or office spaces to tenants, who pay in installments as stages are reached in the construction process. Each round of payments funds the next stage of construction. At the end, the transfers of apartments or offices are made to the landowner/shareholders who subsequently convey them to the pre-sale tenants. Since none of the agreements are civil law property transactions, they have not been registered and the landowners and tenants have had no civil law protection until the very end. To remedy this problem and thereby make pre-sale more attractive for buyers, in February 2004, the parliament has passed an amendment to the Construction Law, sponsored by the national Builders' Association.<sup>8</sup> The law authorizes the IPRS to create a system of "temporary

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<sup>1</sup> Higher numbers of mortgages were registered in 2001 (over 6,000) and 2002 (over 7,900).

<sup>2</sup> See news report (2004), *Te blesh shtepi ne Tirane (Do you want to buy a home in Tirana?)*, Monitor, no. 84, August 2003 at pg. 84.

<sup>3</sup> See Albania Enterprise Development and Export Market Services -- EDEM (2004), Survey of Lenders in Albania, Report prepared for USAID, <http://www.dec.org>.

<sup>4</sup> European Union (2004), Stabilization and Association Report, Commission Staff Working Paper for Albania at pg. 16, <http://europa.eu.int>.

<sup>5</sup> See News report (2004), *Te blesh shtepi ne Tirane (Do you want to buy a home in Tirana?)*, Monitor, no. 84, August 2003 at pg. 84.

<sup>6</sup> See Renee Giovanelli and David Bledsoe ( ) Land Reform in Eastern Europe -- Western Balkans (RDI)

<sup>7</sup> One aspect of this is that the bailiff's frequently have no transport, so that the bank itself provides the car to take an officer to the site. The CARDS program has reported an improvement in the volume of judgments that are successfully executed, see CARDS Programme (2004), European Commission Staff Working Paper, Stabilization and Association Report, [www.europa.eu.int](http://www.europa.eu.int).

<sup>8</sup> Law 8402 of 10 September 1998 (amended by law 9200 of 26 February 2004, On the Control and Discipline of Construction Work, Article 12/1.

registration" of the land contracts and the pre-sale agreements. The IPRS has not yet created the regulations and procedures for "temporary registration."

Apart from mortgage loans, there is evidence of increased bank lending in the agri-business sector, including a 22 percent increase in loans for processing equipment in bread milling, dairy and meat production enterprises.<sup>9</sup> International partnership activity in the area of mortgage lending has taken place in the context of providing training to the banks in developing forms and procedures for lending, generally.<sup>10</sup> There are several projects, assisting the development of credit unions and micro-lending institutions, including the Saving Credit Association Union financed by the World Bank Microcredit Project, which has organized savings and credit institutions covering 401 villages and the PSHM program of USAID, which has extended more than 5,000 micro-enterprise loans.<sup>11</sup> As the client base has grown and some assisted enterprises have "graduated" to larger scale credit needs, about hundred mortgage applications have taken place and about a thousand of pledge cases when crediting beyond Lek 300 000.<sup>12</sup>

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<sup>9</sup> CARDS Programme (2004), European Commission Staff Working Paper, Stabilization and Association Report, at pg.26.

<sup>10</sup> See Albania Small Business Credit and Assistance project -- PSHM (2003), Fourth Quarter Report prepared for USAID, <http://www.dec.org>.

<sup>11</sup> See Albania Enterprise Development and Export Market Services -- EDEM (2004), Survey of Lenders in Albania, Report prepared for USAID, <http://www.dec.org>.

<sup>12</sup> Information given by Albania Small Business Credit and Assistance project -- PSHM.

## Appendix 15. Coastal Tourism Zones

Coastal and tourism zones are not synonymous, though in practical terms they can be considered together, since the major areas of tourism development lie along the Mediterranean coast. The "coastal zone" has no definition in law but is recognized as a concept of planning in several policy documents and international agreements.<sup>1</sup> Tourism development zones are a category, defined in the law.<sup>2</sup> In the pertinent areas, these two concepts are superimposed on the general questions of land and property ownership and on the environmental laws and programs for water, land and resource protection. Thus the coastal zones and their tourism areas present a particularly complex structure of land tenure, regulation and planning.

The law *On Priority Tourism Development Zones* defines a special regime of use and development, with the intent of insuring that investment in the zones will benefit Albanian society broadly and not give a "windfall" gain solely to private owners and investors. The law also anticipates the need for a special environmental protection regime in these areas. For both purposes, the law authorizes the Ministry of Territorial Adjustment and Tourism to define the zones, based on a process of planning, and set standards for their future development within the Tourism Development Strategy. A regime of land use control, with permitted and prohibited uses, can be adopted for each zone. The permitted uses may include agriculture, forest and pasture as existing conditions, and resort, hotel and related uses to be designated as "promoted activities" for tourism. In any case in which a promoted activity is proposed, the Ministry can intervene "as representative of the owner of the land" for the purpose of concluding a lease of the site to the project developer.<sup>3</sup> In this way, the Ministry plays a dual role of planning/regulation and business partner.

It appears that the existing law is not capable of protecting the public interest from either the investment or the environmental point of view. Examples of both failings have been seen in summer of 2004. The national level Territorial Adjustment Commission was considering an application to approve the site and authorize project planning for a large-scale resort development in the village of Kakome.<sup>4</sup> The permit approval would have the legal effect of reserving the land for the proposed use and user during the period of planning and project design. In a highly controversial aspect of the case, the Territorial Adjustment Commission required the applicant to assemble the documentation on land ownership from the archives of the regional and local land committees, restitution committee and other ministries (but not the IPRS). The TAC then declared the state to be the owner of all the land, despite the records showing multiple conflicting claims of village residents, former owners, state agencies and persons with claims from the Defense Ministry. The highly unusual procedure, inconsistent with civil law, is now the subject of court challenges.

In another part of the coastal area, south of Durres, the regional Territorial Adjustment Commission for the Tirana Region ordered the municipal officers in coastal commune of Golem to stop issuing permits for the subdivision of land and for construction of beachfront hotels and tourism related services. The TAC revealed the pattern of inter-related actions: First, the

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<sup>1</sup> See Mediterranean Environmental Technical Assistance Program (METAP) Coastal Zone Management Plan, Final Report, Phase One, 1995 and Phase Two, 1996.

<sup>2</sup> Law no. 7665 of 21 January 1993, *On Priority Tourism Development Zones*.

<sup>3</sup> Law 8402, Article 7.

<sup>4</sup> Details of this case were widely reported in the newspapers "Shekulli," "Zeri i Popullit" and "Koha Jone" in July and August, 2004.

communal and regional land administration officers would change the cadastre listing for a tract of land from forest to agricultural -- thus allowing private ownership. Then the IPRS district office would register transactions noting new owners of the land parcels on the tract. The communal urban planning office would issue a planning survey approval (as if a partial urban study had been done) and would give a certificate verifying the administrative authority to build on the land (as if it were a building site). Construction would then take place, with an "after the fact" application to the TAC to legalize the construction.<sup>5</sup>

Similar controversies have been repeated in numerous other areas of the coast. It appears that the existing framework of administration is unable to resolve either conflicting claims to land and property or address itself to the issues of good planning and environmental protection.<sup>6</sup> In fact, the system of a dual state role as both regulator and "partner" in the investment dealings has provided the structure for corruption at all levels.

International partnership projects in the coastal zones, therefore, have attempted to introduce new concepts and procedures of planning, in an effort to make the processes of land administration more transparent and to involve new groups of citizens, enterprises and NGOs. Further, there has been an effort to strengthen both the authority and the institutional capabilities of the Ministry of Environmental Protection in these areas. So far, however, the new approaches appear to be limited to the context of the international projects and their participatory planning methods have not been incorporated either into the law, the administrative procedures or the routine of practice of any of the administrative units with control of the coastal areas.

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<sup>5</sup> Newspaper report 18 August 2004, "Tirana Commission Interrupts the Scheme of Massacre of Golem," *Zeri i Popullit* at pg. 3.

<sup>6</sup> See Centre on Housing Rights and Evictions -- COHRE (2002) *Albania: Resolving the Question of Land and Property Restitution and Compensation*, at pg. 18.

## **Appendix 16. Rural Land Administration and Land Use Controls**

### **Introduction**

Before 1991, the cooperative and state farms determined the use, allocation, cultivation and development of land, subject to the standards, methods and orders of the central agricultural bureaucracy. When ownership of agricultural plots passed to farm families, there was need to re-consider the mechanisms of state control in relation to the new institutions of private property. Albania could look to the experience of modern civil law states around the world, which provide for a dual structure. First, they regulate privately owned land by means of pre-defined and uniformly applicable regulations and offer voluntary extension services to assist farmers in making their management decisions. Second, they manage state owned land by imposing graduated levels of environmental protection; community control and shared access to local resources; and open, competitive bidding for large-scale use of resources.

Based on these civil law models, Albania has enacted some reforms that are moving its system in the direction of a dual land regulation and management structure. However, this process is still in transition and it remains a complex structure, combining administrative control elements of the former system along with new elements of regulation and management. Like other aspects of land and property law, the basic structure is categorical with separate laws, regulations and administrative procedures applicable to:

- Agricultural (cultivated) fields, perennial orchards and vineyards;
- Pastures;
- Forests;
- Lands related to water bodies; and
- Lands requiring protection of specific environmental features.

The administrative units, given power to manage and regulate land use, are also defined on a categorical basis. Significantly, however, within the use categories no distinction is made in the methods of management and regulation based on whether the land is in private, state or communal ownership. The bureaucratic units use the same methodologies and organize the same systems of record-keeping for all land parcels, without regard to ownership status or to the distinction between public and non-public properties under state and municipal ownership.

### **The rural land administration agencies**

Rural land management and regulation can be imagined as a three layer map on which (1) certain state agencies have jurisdiction over geographic territories defined by categories of land use; (2) communal, municipal and regional administrations have overlapping jurisdiction of the portions of these lands which fall within their administrative boundaries and; (3) a few units, in particular the Ministry of Environmental Protection, have authority over specific problems and resources in whatever districts they are found. The two primary agencies are the Land Administration and Protection Sections (regional) and Offices (local), which have jurisdiction over agricultural land, and the Directorate of Forests and Pastures, with national, regional and local units. Lands for housing, trade, services and industry, within village boundaries are under the jurisdiction of the Territorial Adjustment Committees. Lands in the protected areas are administered by management entities, specifically created for each park, reserve or other protected territory. The Ministry of Environmental Protection has an increasing role in regulating

resources and addressing problems of pollution and degradation that occur in such areas as wetlands and sites of industrial pollution.

Both the Land Administration and Protection agencies and the Directorates of Forests and Pastures are subordinate to the Ministry of Agriculture and Food. However, they have different relationships with the regional and local communal/municipal administrations. The regional Land Administration and Protection Sections are subject to policy direction and definition of their work programs by the regional (qark) administration. The local Land Administration and Protection Offices are directed by the communal or municipal administrations. Technical and methodological standards, as well as personnel and management standards, are set for both units by the Ministry, through its Directorate of Land Administration, and the ministry provides the budgets for the sections and offices.

The Forest and Pasture Directorates are more strongly hierarchical and have weaker linkage to the communal/municipal and regional administrations. The General Directorate of Forests and Pastures within the Ministry of Agriculture and Food sets the broad policies, methodological and technical standards. The regional Directorates and local offices have separate tasks related to the pastures and forests, which have been retained in state ownership, and the pastures and forests transferred to communal control.

The difference in jurisdictional structure of these main units is the result of two factors. First, the state has retained in its direct control large territories of forest and pasture, which must be directly managed by the Directorates of Forests and Pastures. In contrast, the great majority of agricultural land is privately owned and the state-owned "refused" lands have been placed under communal control. Second, the parcels of agricultural land are defined within the borders of the administrative territories of communes, municipalities and regions. In contrast, the division of territories of forest and pasture for management purposes follow lines of topography and natural features, which are not co-terminus with administrative boundaries. Despite these differences, from the point of view of farm families, village elders and communal administrations, the problems of agricultural, forest and pasture use and allocation are interrelated. A service-oriented administration of rural land management would require highly coordinated, team approach among the regional and local staffs. The level of cooperation and joint activity by the agencies varies from region to region and commune to commune and appears to be the result of the creativity and managerial skills of the regional and communal leadership.

### **Administration and protection of agricultural land**

Cultivated fields, perennial orchards and vineyards are governed by the Law no. 7501, which requires every owner of a land parcel to use it only for agricultural purposes, to preserve and increase its productivity, and to "systematize and protect it in accordance with various projects."<sup>1</sup> The law requires the district Section of Land Administration and Protection in the Ministry of Agriculture and Food to maintain the land cadastre as the primary method of state oversight.<sup>2</sup>

The Land Administration and Protection sections and offices have jurisdiction over all land -- private, state and communal/municipal.<sup>3</sup> In addition to their responsibility to keep the

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<sup>1</sup> Law no. 7501 of 19 July 1991, On Land, Article 11.

<sup>2</sup> Law no. 7501, Article 9.

<sup>3</sup> Law no. 8752 of 26 March 2001, *On the Creation and Functions of the Agencies for Land Administration and Protection*.

cadastre and prepare maps and geographic data systems, the regional Sections are to undertake the technical studies, which support decisions on construction and programs for land quality improvement and land consolidation.<sup>4</sup> They may conduct valuation of land for purposes of taxation, expropriation and the fixing of compensation and penalties for damage to land quality. The local Land Management and Protection Offices have authority to arrange for the leasing or grant of use permits or licenses for the communal forests and pastures and any state-owned agricultural lands.<sup>5</sup> They are expected to monitor the use of land by any owner for compliance with environmental protection requirements, land use and quality preservation regulations and other conditions or restrictions, included in a lease, use agreement or conditioned ownership transfer. They are to investigate complaints about the non-use or misuse of land and initiate enforcement procedures, which can lead to a withdrawal of the land rights from the violator.

In 2004, the manpower authorization for land administration and protection consists of 102 positions in the 12 regional Sections, and 102 positions in the 36 local Offices.

The methodology of land administration involves the recording of information about the conditions of the land, based on soil testing and analysis of crop production. By a process called "bonitimi" measurement, parcels or tracts of land are assigned fertility coefficients and these are to be recorded in the cadastre as a base line.<sup>6</sup> Subsequently, in programs of periodic monitoring and re-testing, progress in improving the soil or problems leading to its degradation are to be observed and appropriate measures -- support or sanctions for violations -- can be taken. Thus, the land cadastre is viewed as the central instrument of control. It is required to contain the following categories of information about each parcel:

- Ownership,
- Use (by classification and sub-classification),
- Location (position, boundaries, coordinates)
- Physical characteristics and soil composition,
- Value,
- Environmental damage or threats if the parcel is in a hazard zone.<sup>7</sup>

From the cadastre, the land administration section is expected to provide pertinent information to its staff or other agencies, which are making plans or studies of the pertinent land area. These studies are expected to provide the substantiation for a series of actions:

- Change in the category of a parcel of agricultural land to another rural category (forest, pasture, protected). This must be done on the basis of a proposal of the communal or district Council, which is given final approval by the Minister of Agriculture and Food.
- Changes of land of any other category into agricultural land, by the same procedure of communal/district Council proposal and approval by the Minister of Agriculture and Food.
- Reclassification of fallow and un-used land into forest use.

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<sup>4</sup> Law no. 8752, Article 12; Decision of the Council of Ministers no. 532 of 31 October 2002, On the Functioning of the District Sections of Land Administration and Protection and the Local Offices of Land Administration and Protection.

<sup>5</sup> Law no. 8752 of 26 March 2001, Article 13.

<sup>6</sup> The methodology appears to be unchanged since the Communist era, and its relevance in the context of small family farm plots is questionable.

<sup>7</sup> Regulations of the Council of Ministers, No. 532 of October 31, 2002, On Exercising the Functions of the Offices of Management and Protection of Land in Municipalities/Communes

- Change in the designation of a parcel of agricultural land to allow construction, as provided in the law *On Urban Planning*. Such changes cannot be authorized for land parcels with the highest quality soils.

For each proposed change, the district section of Land Administration and Protection supervises the preparation of a technical report by the Institute for Studies of Land, and coordinates this with the Department of Agriculture and Food within the Ministry. The Ministry approves the final action in the form of a "special order."

In practice, it appears that the Land Administration Offices and Sections are not involved in the systematic analysis of soils and recording of information. Instead, their time is devoted to case-by-case applications (for which fees are paid). A large number of these applications come from citizens who need certificates, attesting to their ownership of land, in order to support their applications for social assistance. The offices also process applications for change in use from agricultural to construction -- in most cases, to legalize already built houses or structures.<sup>8</sup>

### **Administration and regulation of forests and pastures**

For forests and pastures, the laws make distinctions between the administrative functions, related to state, communal and private lands, but in practice, the same methods of management are applied for all three categories. For pastures, Law no. 7917 gives the Directorate of Forests and Pastures the responsibility to inventory state and communal pasture lands and create management plans or assist the communes to create these plans.<sup>9</sup> The plans become the basis on which actions are to be taken for protection and use of the pastures, including calculation of the numbers of livestock that can be supported on a sustainable basis. The Directorate has authority, in accordance with the plans, to undertake infrastructure improvements and issue permits for mining and use of other resources. The law also envisions a continuing process of cadastre evaluation of the land and the formulation of plans for drainage, irrigation or erosion control works to upgrade and protect the land. Any private owner of pastureland is required to "be involved in the general strategy for pasture and meadow development."<sup>10</sup> For forests, the Law no. 7623 describes a similar system of management, including the creation of 10 year management plans, the inventorying of resources and recording of data in a forest cadastre and the periodic monitoring of conditions in the field, against the base line data.<sup>11</sup>

In both cases of pastures and forests, it is expected that the terms and conditions of resource use, spelled out in the management plans, will become conditions of any lease, right of use or license, given to a citizen or enterprise. Thus, the ultimate forest or pasture user should become responsible to take whatever measures are required for protection of resources or upgrading and improvement of soil and resource quality. Presumably, once the leases and use right documents are in place the inspection services and forest police can check the sites periodically to determine whether the terms and conditions of the agreements are being fulfilled and to take enforcement actions if violations are occurring. It is unclear, however, whether the methodologies of forest and pasture resource valuation, cadastre management, plan preparation and subsequent monitoring and evaluation against a baseline can produce accurate and timely substantiation for legal actions.

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<sup>8</sup> Information supplied by Ejup Hamza, professor of survey and land arrangement at Tirana State Technical University and former District Registrar of Librazhd IPRS.

<sup>9</sup> Law no. 7917 of 13 April 1995, *On Pastures and Grazing Land*, Articles 9 through 15.

<sup>10</sup> Law no. 7917, Article 10.

<sup>11</sup> Law no. 7623 of 13 October 1992, *On Forests and Forest Police*.

An important aspect of use management, which the laws treat in somewhat different ways for forests and pastures, is the process for changing the use designation. Law no. 7917 allows changes in use of pasture areas with three levels of authority:

- Areas up to 10 hectares, changes can be approved by the General Director of Forests and Pastures;
- Areas from 10 to 50 hectares, by the Minister of Agriculture and Food;
- Areas over 50 hectares by the Council of Ministers.<sup>12</sup>

Law no. 7623 provides that forest areas can be re-designated to other uses with the following levels of authority:

- Areas of poor quality forest less than 5 hectares by the General Director;
- Areas between 5 and 50 hectares by the Minister of Agriculture and Food;
- Areas over 50 hectares by the Council of Ministers.

The basis for authorizing a change in either a pasture or forest area is unstated. However, the laws imply that substantiating evidence must be produced, based on the methodologies of resource measurement, to show that the resources on the land, subject to change are of lesser quality and that the change will not have negative impact on adjacent areas of high quality.

In practice, some progress has been made in the evaluation of forest conditions, overall, and the highest quality level forest areas have been designated as protected zones, based on the international classification standards.<sup>13</sup> In preparing for the transfer of communal forest and pasture areas, the Directorate of Forests and Pastures has carried out the preparation of the 10-year plans, based on an assessment of resources weighed against the demands of the local population. No evaluation of the sufficiency of these plans has been found.

### **Construction and development on rural land**

The placement of buildings and infrastructure on rural lands is subject to the provisions of the Law no. 7501, which prohibits the construction of dwellings, buildings for social services and other non-agricultural purposes outside the construction line ("yellow line") defining a village or urban settlement.<sup>14</sup> Buildings and structures related to agriculture and livestock can be built, subject to a permitting process, defined by the Council of Ministers. It requires a review of plans and building permit issued by the Minister of Agriculture and Food. Persons who violate these provisions are subject to a procedure of administrative sanction, which can involve the assessment of fines as well as the withdrawal of their rights to the land, if they are the persons to whom rights have previously been given (rather than illegal occupants).<sup>15</sup>

In order to gain a permit to construct buildings or other improvements on rural land, the land owner or developer applies to the communal Office of Management and Protection of Land, which reviews the application in conjunction with the regional level Section of Administration and Protection of Land.<sup>16</sup> The agencies look at the appropriateness of the construction for the rural economy; its technical requirements and compliance with codes of construction, environmental and infrastructure standards; and its placement on land of high quality, medium or

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<sup>12</sup> Law no. 7917, Article 8.

<sup>13</sup> See Ministerial Conference on the Protection of Forests in Europe (2003), report on Sustainable Forest Management, [www.unece.org](http://www.unece.org).

<sup>14</sup> Law no. 7501 of 19 July 1991, *On Land*, Article 14. This same prohibition also appears in the law no. 8405 of 17 September 1998, *On Urban Planning*, Article 33.

<sup>15</sup> Law no. 7501, Articles 15-23.

<sup>16</sup> Council of Ministers Decision no. 532 of 31 October 2002, *On Establishing the Functions of Administration and Protection of Land*.

low quality agricultural soil. If the application proposes the construction of a building that is not within the category of agricultural use, then there must be a separate, related application made for change in the classification of the agricultural, forest or pasture land. This requires substantiation of the economic reasons for the change and the necessity of using lands of high, medium or low quality for the facility. The Minister of Agriculture must make the decision on the construction permit or separately on both the permit and the change in designation of the land use.

It appears clear that the provisions of Law no. 7501, which prohibit non-agricultural use and development of agricultural land, have been widely violated. In particular, the law has failed to reconcile two conflicting fundamental principles concerning rural housing. The law limits housing to territories within the "yellow line" of the village, while it appears that under traditional Albanian custom, families choose to build their houses on their fields.

### **International Partnership Activities**

In the area of forest and pasture management, there have been a variety of Government projects undertaken with the support of international partners, which have sought to increase the technical capabilities of the Directorates of Forests and Pastures and insure their working relationships with communal and municipal administrations. The Government has undertaken a World Bank credit for a Forest Project, co-financed by the government of Italy, which has provided technical assistance to the Forest Directorates in carrying out the transfer of forests and pastures to communes and in building their capacities for planning and management. Approximately 330 000 hectare of forest land has been transferred for communes management and the project facilitated the development of management plans in 126 communes. The project also financed investments in those communes for the restoration of selected forests and pasture areas US\$ 3.72 million. In 2004, the project had completed 21 high forest management plans. A demonstration forest thinning project was carried out on 2,600 hectares.<sup>17</sup> The USAID Private Forestry Development Project assisted in developing the private agro-forestry and in making the transfers of forest and pasture areas to communes. Assistance was given to the state agency and communal administrations, and local citizens were organized into Communal Forest Users Associations, which became the signatories to the subordinate use agreements with the communes.

Several international partnerships have supported Government initiatives to bring the Directorates of Forests and Pastures into closer cooperation with other agencies, local administrations and non-governmental organizations to address multi-faceted environmental problems. For example, the watershed projects at Lake Ohrid and Lake Prespa have sought to strengthen forest and pasture management planning as a component of drainage and water quality protection and region-wide land management. Similarly in the USAID Watershed Management Project, models of inter-agency cooperation have been demonstrated.

### **Agricultural Land, Forest and Pasture Management in Practice**

The reports on the outcome of administrative restructuring, technical capacity building and the various programs show a mixed picture. The Ministry of Agriculture and Food has reported significant progress in completing forest and pasture management plans, bringing forest areas under management and carrying out reforestation activities.<sup>18</sup> Other recent evaluation reports, prepared for international organizations, find continuing high levels of soil erosion and

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<sup>17</sup> See Forest Project Albania, [www.esteri.it](http://www.esteri.it).

<sup>18</sup> Ministry of Agriculture and Food of Albania (2002), Annual Report at pp. 85-88; (2003) Annual Report.

degradation, due to over-grazing and the inability of the administration to control the movement of livestock in forest areas.<sup>19</sup> While the international agencies have favorably reported the adoption by the Albanian government of land improvement strategies, there is not yet a record of achievement.<sup>20</sup>

The mechanisms of rural land administration have been criticized for the lack of an adequate planning framework, clear criteria for monitoring and enforcement and a lack of economic incentives for people to comply.<sup>21</sup> Since one year it has been established in the Ministry of Agriculture and Food, the Department of Rural Development. Adequate planning framework must be developed under their guidance and follow up.

Attention should be paid to the problems inherent in the categorical administrative structure. The separation of responsibilities for management of forests and pastures and management of agricultural lands appears to make sense for those aspects of technical and scientific activity, where particular expertise is needed. Similarly, the administration of protected lands and remote lands retained in direct state control merits distinct administrative units. However, at the level of communes, forest, pasture and agricultural areas are used on a daily basis by citizens, and the economic well being of most families involves some activity on all three areas. Maintaining distinct legal relationships, offices, systems of data collection and planning, appear to dissipate resources and involve staff in administrative management functions, rather than extension assistance to farmers and citizens.

Within both the forest and pasture directorates and the land administration and protection units there is a combination of responsibilities that appear to create contradictions. For example, they are supposed to receive and assemble data on the use and conditions of land in order to keep the cadastre and make valuations, as well as to monitor use and determine violations. The second power undermines the first -- why would any citizen cooperate in giving information that might be used for prosecution? Similarly, they are given power to negotiate the leases and licenses on behalf of the state -- presumably with an interest in maximizing revenue and production. At the same time they have responsibility for defining, monitoring and enforcing environmental requirements and restrictions. In this context, the objectivity of their land valuations and their environmental protection efforts are highly suspect.<sup>22</sup>

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<sup>19</sup> See Andrea Saludi (2004) County Pasture and Forest Resource Profile, Albania, [www.FAO.org](http://www.FAO.org). Also see ARD, Inc. (2003) Albania Biodiversity Assessment, report prepared for USAID.

<sup>20</sup> See Economic Commission for Europe (2002) Environmental Performance Review, Albania.

<sup>21</sup> Harold Lemel,, (2005), *Compilation of Reports, Findings and Proposals on Land Tenure and Organizational Issues*, Natural Resources Development Project of the World Bank, at pg. 38-39

<sup>22</sup> Further analysis of the weak and contradictory mechanisms of land protection and enforcement by the Land Management and Protection Sections and Offices is found in Patrick McAuslan (2003) Albania Land Use Policy: Land and Natural Resource Law in Albania, Europe Aid project 112672, AgroTec Sp.A Rome at pp 14-16.

## Appendix 17. Urban Land Use and Development Regulation

### The structure of urban landholding

Urban land and properties consist of the lands, buildings and separately owned units located within the "yellow line" boundaries of settlements -- cities, towns and villages. Land is classified in three categories: (1) truell (land with legal status as a building site), (2) public use land (streets, open spaces and the sites of government buildings) and (3) agricultural land. Within the urban boundaries agricultural land has a reserve status with potential future use after its transformation to truell in the process of urban development planning. Each category is further subdivided by its origin in one of the programs, defining ownership rights. Truell encompasses housing land, initially given into citizen ownership; industrial/commercial lands and property derive from the programs of "privatization" of enterprises and institutions. Public use land is determined in the processes of inventory of state properties and transfer of rights to municipalities. Once first registration takes place, land and properties, not categorized as public use, become subject to the same civil law procedures and documentation for subsequent transactions. However, for purposes of land use (future construction, reconstruction and administrative jurisdiction) they retain separate legal characteristics.

As an illustration of the content of the land and property units in urban jurisdictions, the following are statistics assembled from the data on first registration in 16 urban cadastre zones in 2004:

**Chart 17-1. Structure of Urban Property, 2004**

Source: ROI project (USAID)

Properties Categorized:	Number of properties	Percent
<b>By ownership</b>		
All properties	88 140	100.0
Private citizen ownership	65 015	73.8
-- Unverified citizen ownership	10 902	
Private juridical person ownership	6 493	07.4
State ownership	16 721	19.0
<b>By type of unit</b>		
Apartment units	37 607	42.7
Truell (land with development status)	34 680	39.3
Buildings on land	12 168	13.8
-- buildings owned separately from land	2 123	02.4
Streets (public spaces)	2 885	03.3
<b>Illegal status</b>		
Illegal buildings	17 994	20.4

### Planning in the context of transition

Spatial and urban planning in Albania is undergoing a transition with several attempts being made to adjust the principles and practices of planning to the new context of civil law and market mechanisms. Previously, the state was the single source from which all development plans and projects were initiated. Every state action was generated by central economic planning

and was, in theory, fully coordinated with other necessary actions in a rational sequence of time and resource inputs. The land, needed for urban expansion and non-agricultural facilities in rural areas, was identified in a process of "scientific" planning, based on functional needs and design as well as the protection of resources for agriculture and environmental protection. Once identified, the land was withdrawn from existing users and reassigned to the new users by administrative directive. Between the moment of withdrawal and the moment of reassignment, the planning technicians could impose a new pattern of urban land arrangement or project layout. The state was the legal entity on both sides of the fundamental administrative relationship: the permit-granting side and the "applicant" side. The units of administration, empowered to give the permits defined the standards for technical and methodological performance and ordered the professionals (architects, engineers) representing the "applicant" to conform their project plans to the orders. The "applicant" enterprise or agency had the responsibility to build in accordance with the plans and to cover all costs, including any infrastructure needed to accomplish the new urban plan.

The introduction of civil law and market economic relations has changed the fundamental context in which planning and land use controls must take place. The initiative for development now emerges from decisions made by a multitude of independent persons -- developers, builders, investors, families, landowners, as well as state, regional and municipal administrations. Project proposals do not occur in logical sequence or in coordination with other actions. The land, on which urban or rural projects are proposed, is held in small parcels by owners, lessees and users, whose rights are legally defined and cannot simply be withdrawn or made subject to new patterns of land arrangement by administrative order. Instead, the processes of planning, which seek to coordinate actions and insure orderly urban expansion, must apply to individual decisions through regulations, state acquisition of property rights with compensation, economic incentives and other indirect methods. The actions of state and municipal agencies must respect property rights and recognize the independent status of citizens, enterprises and organizations.

The recent changes in the Albanian law *On Urban Planning* are evidence that the legislators, administrators and planning professionals are coming to understand the problems of transition. However, the work of adapting new mechanisms of law, regulation and economic incentives is proceeding slowly.

### **The law *On Urban Planning* of 1993**

The law *On Urban Planning* of 1993 was the first step in changing the structure of administrative directives into new forms of administrative permits and legal relations.<sup>1</sup> It recognized that citizens (families), enterprises, organizations and other juridical persons would come forward as "applicants" and that they would possess rights to land and real property, as well as "civil" rights to uniform procedures and standards. It also recognized that the permits and approvals, granted by the responsible government agencies, would not apply as "orders" to the professionals, who were now under contract to the "applicants." The 1992 law was not successful, however, because it did not clarify the content and legal significance of its permits and approvals. The drafters of the law adopted a new vocabulary but they retained intact the former system of hierarchical planning and full discretion for the planners and administrators to make decisions on a case-by-case basis. The law continued to assume that all rights to use and develop property were formed and controlled by administrative law and that the civil law conveyed no rights or protections on the owners or users of urban land.

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<sup>1</sup> Law no. 7693 of 20 April 1993, *On Urban Planning*.

## **The law *On Urban Planning* of 1998**

In the 1998 law *On Urban Planning*, some of the problems of the 1993 law have been addressed.<sup>2</sup> In particular, Articles 30-33 include statements about how the urban planning and permitting processes are linked to basic rights of the owners of land. These articles state the following principles:

- that the development of lands in both public and private ownership are subject to the same systems of planning and permitting (Article 30);
- that the process of expropriation of private land and property by the state is to take place in conformity with the plans (just as the process of development must follow the plans) (Article 31);
- that owners of land within the construction line are entitled to conduct urban studies (by contract with professionals) (Article 32);
- that owners of land outside the construction line are prohibited from carrying out urban development on these lands, except when this is allowed by a regional study or master plan (initiated by the state or municipal government) (Article 33).

These provisions are significant because they state the basic relationships in legal, not administrative, terms. However, they provide only broad principles and the definition of the content of the rights of owners and users of urban land is still evolving. At present, Albanian cities have not achieved a comprehensive or effective mechanism of urban land use planning and development regulation. The incomplete system is described in the following paragraphs.

### **Jurisdiction over Urban Development**

In each city, town or village, which has been classified as an urban settlement, the power to review land use proposals and construction plans has been given to system of Territorial Adjustment Commissions (TACs). These boards, which consist of the heads of pertinent public agencies, exist in a hierarchy at municipal, regional (qark) and national levels, with power defined by the size and use category of the development proposal. For example, the municipal TAC has power to approve a partial urban study for a neighborhood in the city. The regional TAC can approve an urban study for a commune. The national TAC must approve any urban study for a city center with a population over 50,000 and for any zone or development site of more than 15 hectares.

Technical expertise for the TACs is provided by the Urban Planning Sections in the regional districts (qarks) and large cities; and by the Urban Planning Offices in small cities and communes.

### **The urban planning procedure**

The law *On City Planning* and the *Regulations on City Planning*, adopted by the Council of Ministers, describe the hierarchy of spatial plans and the permitting processes, by which the plans are applied to specific land parcels and projects.<sup>3</sup> The structure is as follows:

- (1) Regional Urban and Environmental Studies

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<sup>2</sup> Law no. 8405 of 17 September 1998, *On Urban Planning*.

<sup>3</sup> Law no. 8405; Council of Ministers Decision no. 722 of 19 November 1998, *On the Regulations for Urban Planning*.

- (2) Master Plans
- (3) General Adjustment Plans
  - The urban construction line (yellow line)
  - The suburban line
  - Functional zones
- (4) Partial Urban Development Studies
  - Permitted uses and parameters of development of land parcels
- (5) Site location permits
- (6) Construction permits

The system is supposed to work in the following way: The Urban Planning Sections and Offices, working with the national Urban Planning Institute and other institutes, prepare Regional Urban and Environmental Studies for large-area territories -- whole districts, multiple districts or multiple municipalities. These plans are approved by the national or district TACs. They evaluate the capacities and limitations of the land in the defined territory and existing infrastructure to support uses of various categories -- agriculture, forestry, urban development, tourism, mining, etc. They forecast growth in each category during a period of 20 years and determine the land, natural resources and infrastructure, which will be needed. Based on these analyses, they identify the most appropriate locations for the various types of development and infrastructure systems, and the areas where development should be discouraged or prohibited in order to protect environmental, historic and other features. Along with the Regional Urban and Environmental Studies, Master Plans may be prepared. These contain many of the same analyses of land, resource and infrastructure capacities and potential impacts. However, they focus on specific sectors or problems of development and can encompass the territory of a single zone or lands (and water bodies) with particular characteristics.

Based on the Regional Urban and Environmental Studies and any pertinent Master Plans, a General Adjustment Plan is prepared for each city, approved by the national TAC, and for each smaller urban settlement, approved by a regional TAC. This plan sets the line of urban construction (the "yellow line"), within which the urban infrastructure systems will be expanded in order to allow the construction of housing, trade, service and industrial facilities during a 15-year period. The plan also sets the suburban line, further out on the periphery of the city. Within this line are encompassed territories identified for longer-term urban expansion and for the location of certain ex-urban uses (solid waste facilities, cemeteries, etc.)

The construction line and the suburban line have different legal status. Within the construction line are the territories in which the development of urban housing, industry, trade and service facilities is permitted. Land parcels in this zone can be built upon after the developer has received site location approval and a construction permit. Within the suburban line, the land retains its rural classification, but government agencies (including the communal administrations) must adjust their plans and regulatory actions to insure that the current use of these lands does not hinder their future urbanization or use for urban-related infrastructure.

Within the yellow line, the General Adjustment Plan subdivides the territory into functional zones. For each zone there are identified the predominant types of uses, which will be permitted, and the main standards for the size and types of buildings which may be constructed. Specific standards for these functional zones, or for parts of these zones, can be elaborated in Partial Urban Studies. These can include maximum building heights, other building dimensions and the amount and placement of open space surrounding each building, distances between the building façade and the street or between buildings.

## **The procedure for approval of a development (or new use of land)**

When a landowner, land user or builder proposes a new use of land or a construction project within the yellow line, he/she must file an application with the pertinent regional/city Urban Planning Section or the local Urban Planning Office for a site location permit. The application form contains the site layout plans or project design plans, showing how the proposed development will meet the necessary standards. There are two ways by which precise standards, applicable to the particular land parcel, are determined. If there exists a General Adjustment Plan, master plan or partial urban study for the zone in which the development will be located, then the permitted use and parameters of development defined in these plans will be extrapolated for the parcel. For example, if the General Adjustment Plan states a density standard of "x" number of persons per hectare or per block, the proportional level of that number must be calculated for the specific parcel. Generally, this can be done easily for projects that propose routine types of development (houses, small shops).

For larger scale developments and for zones in which the existing plans do not provide clear guidance, the applicant must substantiate its proposal by preparing a Partial Urban Study, based on an order issued by the TAC. This small-scale plan may cover a neighborhood, block, several land parcels, or the specific site. It draws from the hierarchy of existing plans any general principles and standards, which justify the proposed use of the land parcel(s) and parameters of development. When the plan is finished, it must be approved by the TAC and it then provides the basis for the site location permit and any "urban development conditions," which are defined by the Urban Planning Section or Office. The project architects must follow the urban development conditions in designing the buildings and infrastructure. Their design drawings are presented to the pertinent municipal, district or national TAC for approval, which is issued in the form of the Construction Permit.

## **Problems with the urban development process**

In theory, the hierarchy of urban studies makes it possible for the citizens and enterprises, who propose land use projects, and the government officers, who review and approve the applications, to be guided by scientifically-based principles and standards. In reality, because of the limitation of resources and the limited capacity of the urban planning sections and offices, few contemporary plans have been prepared and adopted. Further, there has been limited work done to adapt the methodologies of planning to take into account the new context of civil law property ownership and new planning concepts, such as "sustainable development." Thus, planning provides very weak guidance and most land decisions are ad hoc and influenced by corrupt practices, or they take place outside the system altogether.

The fundamental problem is that the legal concepts and methodologies of planning no longer relate to the spatial reality, patterns of land holding and dynamic functions of urban life. Several attempts made by projects to introduce new concepts -- such as "zoning" and "strategic planning" -- have not been successful.

The legal problems appear to lie in the undifferentiated definition of the status and content of the various plans and urban development studies, which the law and regulations require. The 1998 law identifies three categories of plans, which are intended to provide the substantiation for all government actions, affecting the use and development of land, and for all regulatory actions. These are (1) Regional urban studies, (2) Master Plans and (3) the General Adjustment Plans for cities. Each is supposed to look at a territory of a different scale and balance the projections of development against the land resources in the territory. The law is

extremely complex in assigning the tasks to create these plans and the powers to approve them to different levels of TACs, depending on size and category of use. Thus, there is considerable overlap in jurisdictions.

Only the third plan -- the General Adjustment Plan of a city, results in the creation of legally binding rules by setting the "yellow line" separating land on which development is permitted from land on which it is prohibited. Despite this significant difference, the law describes the legal status of all three plans with the same phrase -- they are "technical document(s), which shall determine technical and legal relationships in the field of urban development."<sup>4</sup> This language appears to mean that the relationships created by these plans are administrative only -- that is, intended to bind governmental agencies. They do not regulate the behavior of persons (and agencies) which own or control land and property. It is obvious, however, that a regional study, which analyzes land capacity data at a broad scale (1:50 000 or 1:20 000) cannot set rules for the use of the land in the same way as a general adjustment plan which analyzes a zone in detail (1:1 000 or 1:500).

In describing their content and clarifying the scale of the plans, the Regulations on Urban Planning reveal the basic idea that these plans each consist of a box of maps, containing quantitative or categorized data shown in graphic form. This was the common practice in all the Eastern European countries during the Communist era. It meant that the plans were to be read and used only by the professional specialists -- the architects, landscape designers, etc. -- who would prepare the substantiation for site location and project designs. They were not documents that would guide decision making by private persons, or serve an educative or advocacy function, allowing interested parties to reach consensus on the future of their city or region.

By describing the plans as "technical" the key question of legal status remains unanswered. That is, whether the various elements of the plans, intended to result in actions or prohibitions, have legal-empowering or legal-limiting force? There are several key mechanisms:

- the construction line (yellow line);
- the suburban line;
- the designation of zones for nature protection;
- the description of standards for building placement, building size and character in various functional zones.

It appears that these do not apply as direct regulations, which define and affect the rights of landowners, land users and builders. They do not become legal characteristics of the land, until some other procedure takes place to attach them as conditions or limitations. Because of this, it is necessary for every development project and every new use of land to undergo a site-specific approval, which creates the right of use and sets the parameters of development, only for the specific site. What this creates is a system in which every development and land use is open to negotiation without discipline. In theory the hierarchy of plans imposes all of the conditions and limitations, necessary to protect the environment, insure proper infrastructure and design. In reality, since the plans are largely missing or obsolete, the urban planning sections and offices, and the TACs work in a vacuum. In the chaotic conditions of population migration, unrestrained demand for housing and business premises, it is not surprising that the system has or could degenerate into corruption.

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<sup>4</sup> Law no. 8405, Article 5.

As a remedy, several projects have been undertaken to introduce new legal and planning methods to the process of land use and development regulation. Under USAID sponsorship, a project was undertaken to apply the methods of "zoning" to the city of Tirana.<sup>5</sup> This project attempted to create a system in which rights to use urban land and parameters of development could be pre-defined on a zone-by-zone basis. This would change the nature of the planning and project approval processes, removing discretion from the TACs and Urban Planning Sections and Offices and giving landowners and project developers the ability to know (under a guarantee of civil law protection) how land could be used or developed. Although a draft "zoning regulation" for the city of Tirana was prepared, it was not adopted. The experiment seems to show that it is not possible to adapt "zoning" to the conditions of the city, because of the fragmentation of land and the lack of clear distinction between private and public space. (Zoning in Western Europe and America is a system that is applied in cities where land parcels are of regular size and shape and arranged on blocks with well-defined boundary lines between public rights of way and private property.)

Some progress has been made in applying the methods of "strategic planning" to Tirana and its region<sup>6</sup> and at a smaller scale in Pogradec.<sup>7</sup> The strategic planning projects have incorporated participatory approaches, in which citizens, enterprises and NGOs are joined as "stakeholders" with the pertinent state and municipal agencies in creating the plans.<sup>8</sup> These projects also have also new methodologies for measuring dynamic urban change -- including considerations of auto traffic and private property development. As data becomes more clear about the patterns of land ownership and use -- with the completion of first registration in urban zones and with other efforts to map urban zones -- the new approaches may yield more effective plans. These can guide the processes of land and property acquisition for rights of way and mechanisms for rationalizing land holding by re-consolidation or land exchange. The urban studies, undertaken to substantiate the transformation of illegally developed peri-urban areas into urban areas, are experimenting with these approaches.<sup>9</sup> The peri-urban plans will allow the "yellow line" to be drawn around the formerly rural districts, making it possible to authorize the change in use of the land parcels into development sites (truall).

### **International partnerships. This matter has not been treated in the Cart No 3**

In urban territories, support from international partners has focused on Government initiatives aimed at enabling good urban governance. The Netherlands Government has provided support for a program implemented by the Ministry of Local Government and Decentralization and the Albanian Association of the Municipalities in cooperation with the Institute for Habitat Development. Recently the program has been focused on working together with the municipality of Fieri and Elbasani for an active engagement of municipalities in strengthening urban governance. This program will serve as a model for the other municipalities of the country. The program will focus on the enhancement of human capacities in strategic planning of city developments in a participatory way. A grant from the Government of the Netherlands,

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<sup>5</sup> Urban Institute (2001), Zoning Regulations for the City of Tirana, prepared with assistance from the Urban Housing and development project of USAID.

<sup>6</sup> PADCO (2002), Strategic Plan for Greater Tirana, prepared with assistance from the Urban Land Management project of the World Bank; Urban Institute. See Besnik Aliaj, Keida Lulo and Genc Myftiu (2003), Tirana: The Challenge of Urban Development, prepared with assistance of SIDA and Co-Plan.

<sup>7</sup> City of Pogradec (2000), Strategic Plan for Economic Development, prepared with assistance of GTZ.

<sup>8</sup> The United Nations Development Programme has used similar public participation planning methods in creating its Millenium Development Goals plans for several regions, including Elbasan, Korce and Kukes.

<sup>9</sup> See the Partial Urban Plan for Bathore, prepared under the Urban Land Management Project of the World Bank, with Co-Plan.

administered by IDA, is aimed to support the Tirana City Regulatory Plan. The Regulatory Plan will analyze the current land uses, demographic situations and the capacity of the existing and planned infrastructure of Tirana, in the framework of the administrative, political, social cultural and economic life of the capital. Recently a World Bank mission reviewed a Government initiative for a Land Management and Urban Development project that aims to addressing these issues in a comprehensive way through combining the land and urban operations. The overall goal of the proposed program is to promote the sustainable economic growth through development of efficient land and property markets, strengthening the capacity and resource basis of municipalities, and improvement of urban infrastructure and productivity.

## Appendix 18. Environmental Protection and Land Use

Since 1992, Albania has sought to incorporate into its systems of land and resource management new mechanisms of environmental protection and the consideration of environmental impacts. It has made several revisions to the law *On Environmental Protection*, and has reorganized the agencies responsible for policy and coordination of environmental protection activities.

The law *On Environmental Protection* provides both the framework of broad policies for protection of all elements in the environment, and it places on all persons, using natural resources the responsibility to avoid actions that cause damage, pollution or deterioration of natural qualities.<sup>1</sup> The law envisions three major administrative mechanisms:

- a system of monitoring of environmental conditions, inspection and enforcement of laws and standards;
- a system of environmental permits allowing resource use; and
- preparation of Environmental Impact Assessments as part of the planning for new developments and programs to exploit resources.

The law has required the drafting and adoption of new legislation to define the details of each of these mechanisms. These are not yet put into place, therefore, it is not clear how broadly they will encompass the activities of land use regulation, land management and soil protection and how the Ministry will interact with the other agencies, having direct control over land in various categories.

### Administrative structures

The Ministry of Environmental Protection is a small entity, with less than 110 staff.<sup>2</sup> It is organized with six directorates, which include Pollution Control, Natural Resources and Biodiversity Management, Environmental Assessment and Information, and Environmental Policy and Project Implementation. It has a separate Environmental Inspectorate for enforcement and a Project Management Unit that administers international partnership projects.

At the level of Qark administration, there are 12 Regional Environmental Agencies. These units have the primary responsibility to monitor environmental conditions in their regions; to enforce environmental laws and standards; and to take part in regional and local planning activities. Each commune and municipality is authorized to have a local environmental agency. However, the ministry does not provide technical staff nor transfer resources for the local activity.

Within the Council of Ministers there is a separate National Environmental Council, which is responsible for overall environmental policy as it relates to the mission of all other ministries and agencies. The Council works with the Ministry of Environmental Protection in setting broad policies and, in particular, they jointly prepare the National Environmental

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<sup>1</sup> Law no. 7664 of 1993 amended by law no. 8364 of 1 July 1998 and law no. 8934 of 5 September 2002, *On Environmental Protection*.

<sup>2</sup> The Ministry was created in 2002 by law no. 8934. It superseded the National Environmental Agency, created by law no. 8364 of 1998; which had followed the Committee on Environmental Preservation and Protection, first established by law no. 7664 of 1993.

Strategy. Under the authority of the Prime Minister an inter-sectoral committee to implement the National Environmental Action Plan has also been organized. Other independent institutions include the Environmental Center for Administration and Techniques (ECAT), which is the major research institute on environmental matters.

### **The National Environmental Action Plan**

The primary environmental policy document is the National Environmental Action Plan, a ten-year plan, prepared by the Ministry and the Council on Environmental Protection and adopted by the Council of Ministers. The first NEAP was issued by the Committee on Environmental Preservation and Protection of Albania in 1993 and has been revised subsequently in 2001. The NEAP is supplemented by a series of subordinate policy plans, which include the National Waste Management Plan, the National Environmental Health Action Plan, the National Biodiversity Action Plan and the Coastal Zone Management Plan.<sup>3</sup>

### **Processes and procedures**

The law *On Environmental Protection* defines eight categories of planning, administrative and regulatory mechanisms, which are intended to control government and private activities that are likely to affect the natural environment. They reflect the concepts and practices of environmental protection, which appear in the laws of other European countries and are embodied in various European and United Nations conventions. They impose responsibilities on all three levels of government -- national, regional and municipal -- with the role of coordination fixed in the Ministry of Environmental Protection and its subordinate Regional Environmental Administrations. The categories are the following:

- (1) The national strategy and action plan on environmental protection and local environmental action plans;
- (2) The inclusion of environmental considerations in all sector strategies for economic and social development;<sup>4</sup>
- (3) Environmental Impact Assessments (EIA), which must be prepared for all projects which are likely to have environmental impacts;
- (4) Strategic Environmental Impact Assessments (SEIA), which must be prepared for all governmental policies, plans and programs;<sup>5</sup>
- (5) Environmental Statements, issued by the Minister of Environment at the conclusion of an EIA review;<sup>6</sup>
- (6) Environmental Permits issued for actions, which have been subject to Environmental Impact Assessment and are expected to affect the environment;<sup>7</sup>
- (7) Acceptance and authorization of activities of local significance by the Regional Environmental Administrations;<sup>8</sup>
- (8) The power to adopt environmental normative technical standards to regulate activities affecting the environment.<sup>9</sup>

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<sup>3</sup> A full description of the NEAP, its subordinate policy documents and the various international environmental programs and conventions, in which Albania participates, is provided in Regional Environmental Center for Central and Eastern Europe (2000) *Albania Country Report*, [www.REC.org](http://www.REC.org).

<sup>4</sup> Law no. 8364, Article 9.

<sup>5</sup> Law no. 8364, Article 28.

<sup>6</sup> Law no. 8364, Article 34.

<sup>7</sup> Law no. 8364, Articles 34-41.

<sup>8</sup> Law no. 8364, Article 45.

<sup>9</sup> Law no. 8364, Article 50.

These mechanisms are not yet being used on a routine basis. However, the government has made a commitment to strengthen monitoring and control and deepen its institutional capacity building.<sup>10</sup> In the context of a number of projects supported by international development partners, methods of environmental planning, impact assessment and regulation are being demonstrated. New legislation has been prepared and adopted for some specific aspects of resource use and regulation, making use of the new environmental protection mechanisms. The most significant of these involves the regulation of water resources.

The control of water resources is divided among three laws, which provide separate systems of administration for the use and protection of surface and ground water generally, for agricultural drainage and irrigation and for drinking and waste water supply. From the perspective of planning and the control of land uses impacting on water quality, the primary system of regulation is found in the law *On Water Resources* of 1996. It provides two categories of powers, exercised by the National Water Council in cooperation with the Ministry of Health and the Ministry of Environmental Protection:

- powers to designate certain territories, which need special restrictions of use to protect water resources;
- powers to impose requirements of design, equipment and functional standards for construction projects and certain types of industrial, mining and other uses.

Five categories of territories may be designated by the National Water Council, based upon proposals and studies prepared by its subordinate water basin councils. These are:

- (1) Zones surrounding water supply sources;
- (2) Areas of "emergent protection," in which there are conditions that may be hazardous to health or the source of serious pollution;
- (3) Parts of watershed basins, or areas adjacent to streams or rivers, which require special protection due to their natural features or ecological interests;
- (4) Wetlands;
- (5) Banks of lakes, rivers and streams.<sup>11</sup>

The first category of zones surrounding water supply sources is further subdivided into:

- (a) areas immediately adjacent to each water source, which are under direct control of the water supply utility;
- (b) surrounding areas in which construction of buildings is prohibited and other agricultural and urban functions are restricted or prohibited; and
- (c) more distant areas, in which agricultural and urban activities may take place by permit.

In defining all of these zones and areas, the National Water Council can create by-laws or regulations that restrict the types of activities and development in the zones, or that define special protective measures (design, construction, and installation of equipment, regimes of monitoring and functional operation) for the permitted activities.

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<sup>10</sup> Council of Ministers of Albania (2003), Progress Report for Implementation of the NSSD and Priority Action Plan, paragraphs 182-187 [www.keshilli.gov.al](http://www.keshilli.gov.al).

<sup>11</sup> Law no. 8093 of 21 March 1996, *On Water Resources*, Articles 40 - 49.

In every case in which a water protection territory has been identified, all other urban studies and plans, which encompass the same territory, should acknowledge its existence and incorporate the same restrictions and protective measures.<sup>12</sup> However, there is not a parallel provision in the Urban Planning Law.

### **Environmental impact assessment**

The environmental assessment procedure is made applicable to a wide variety of construction and resource exploitation projects, and strategic environmental impact assessments are envisioned for major policy initiatives.<sup>13</sup> This process is still being developed.

The essence of the EIA process is the idea that government agencies, at all levels, must give consideration to the potential environmental impacts of their proposed actions, prior to final approval. Those actions, which are likely to have negative environmental actions, must be studied to determine whether there are less damaging alternative actions or whether various conditions and limitations can be included to minimize the negative impacts. In general, the law requires the following:

- All agencies, national, regional and municipal will adjust their decision-making procedures to insure that appropriate environmental consideration is given in every action involving potential changes in environmental conditions. Actions include the preparation of land and resource-use plans and strategies; design and funding of projects to improve infrastructure, construct facilities and alter the natural landscape; permitting or licensing similar actions to be undertaken by independent parties.
- For those projects, which are of a character or size that are likely to create significant impacts, a formal procedure of review is required, in which the environmental information must be assembled and analyzed by technical experts, reviewed and approved by the Environmental Protection agencies, and presented to the decision-makers with recommendations or mandatory conditions.

### **International partnership activities**

International support has focused on two categories of Government initiatives. Several projects have been directed toward the creation of the Ministry of Environmental Protection and building its administrative capacity.<sup>14</sup> Other projects have sought to create new institutional arrangements and introduce new methodologies in the context of specific environmental problems, such as the pollution "hot spots" in Durres Porto Romano area,<sup>15</sup> the Vlora industrial areas,<sup>16</sup> and the improvement of wetland sites in the Narta Lagoon<sup>17</sup> and the Karavasta Lagoon.<sup>18</sup> In several of the wetlands and water control projects, this support has facilitated creation of new citizen and enterprise organizations that can join in the processes of planning, monitoring and

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<sup>12</sup> Law no. 8093, Article 43.

<sup>13</sup> Law no. 8990 of 23 June 2003, *On Environmental Impact Assessment*.

<sup>14</sup> See EU PHARE projects on Institutional Support for Environmental Protection and National Water Strategy project, under no. AL9306 completed in 1997. See also the programs of DFID, strengthening the Ministry of Environmental Protection enforcement inspectorate, in 2002 and 2005.

<sup>15</sup> World Bank Institutional Strengthening of the Environment, 2005.

<sup>16</sup> UN Environment Program, Environmental Hot Spot Clean Up project, 2005.

<sup>17</sup> UN Development Program with Mediterranean Wetlands, Conservation of Coastal Wetlands project, 2003.

<sup>18</sup> European Union PHARE Wetland Management project, ending in 1997.

making use of the natural resource areas. In this way, there is taking place a gradual transformation of the structure of regulation. The traditional model of direct regulation by administrative agencies and research institutes is being replaced by a broader, participatory model in which local government, citizen organizations and economic "stakeholders" all have a role.<sup>19</sup>

## Evaluation

Evaluations of this structure have found several weaknesses, including the failure to separate permitting and control functions.<sup>20</sup> It is recognized that there is an overlap of the functions of the regional Environmental Agencies with the Regional Land Administration and Protection Sections and the Forest regional Directorates. A cooperative relationship is being worked out in the process of drafting the new law *On Soil Conservation*, in a project with assistance from GTZ.<sup>21</sup> As a practical matter the Environmental Protection Ministry has not been given a large staff, so at present there is not significant competition or friction between ministerial groups. Generally, the projects supported by international development partners have addressed the problems by providing technical support and training for the staffs and by creating cooperative structures of planning and project management that join together pertinent units of the two ministries along with local and regional governments, NGO's and user groups.<sup>22</sup>

The environmental protection regulations and procedures also appear to have little effective impact because they have been superimposed upon the existing legal and administrative structure of land administration, without an adequate component of coordination.<sup>23</sup> Increasingly, therefore, attention must be paid to the ways in which the various agencies and interested citizens and entities can be made to work together.

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<sup>19</sup> This participatory process is described by the UN Development Programme (2005) Albania Country Evaluation, <http://intra.undp.org.al>.

<sup>20</sup> UN Economic Commission for Europe (2002) Memorandum of the Committee on Environmental Policy, Report CEP 2002/7, [www.unece.org](http://www.unece.org).

<sup>21</sup> Patrick MacAuslan (2003), Albania Land Use Policy, EuropeAid report no. 112672 at pg. 48, quoting the UNECE (2002) report On the Environment of Albania.

<sup>22</sup> See United Nations Development Program (2005) Country Evaluation, Assessment of Development Results, 2002-2004; also Draft Country Program Document, 2006-2010; <http://intra.undp.org.al>.

<sup>23</sup> Harold Lemel (2005), *Compilation of Reports, Findings and Proposals on Land Tenure and Organizational Issues*, Natural Resources Development Project of the World Bank, at pg. 42.



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