

# **ALBANIA COUNTRY BRIEF: PROPERTY RIGHTS AND LAND MARKETS**

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Rachel Sabates-Wheeler and Myrtha Waite

## 1. INTRODUCTION AND SUMMARY

The purpose of this paper is to provide a summary of the available literature and sources in the Internet related to land market interventions and its impacts in Albania. The Country Brief is part of a broader assessment process to determine the extent to which USAID's programs to improve land markets and property rights have contributed to secure and lower cost transactions in developing countries and transitional countries, hence enabling economic growth and sustainable development (Stanfield and Bloch 2002: 1).

USAID's overall strategic plan aims to assist developing countries in achieving sustainable development, of which the promotion of economic growth and agricultural development are integral. Specifically, it is argued that that well-defined and protected property rights promote economic growth (Dollar and Kray 2000, cited in Stanfield and Bloch 2002: 4). The relationship between land markets and economic growth can be understood in the sense that private ownership or security of rights; a) gives owners or rights holders the ability to recoup investments they make in their properties, hence providing incentives for investments; b) gives entrepreneurs opportunities to acquire land from owners through sale or lease, hence allowing productive investments to be made; c) enhances the ability of entrepreneurs to obtain mortgaged credit to finance investments (ibid. 2002: 5). A further concern of USAID is to ensure that land policy is pro-poor, such that vulnerable and disadvantaged groups are not excluded from land reforms.

This report therefore aims to provide of review the available documentation to assess the validity of the following proposition:

*A key of sustainable rural development is legally secure entitlement to land on the part of the disadvantaged.*

Within this proposition, three general questions have been posed as follows:

1. What evidence is there which will enable an estimate of the overall success of land entitlement projects in reaching their developmental goals?

In particular, since the entitlement projects affect security of tenure, including the marketability of title in most cases we expect to see more market transactions, more secured credit (including mortgages) agreements, more investment in farming activities. What evidence do we have about these expectations?

2. How have the policy and institutional factors which affect the success of these activities been identified and assessed?

The main institutional investment, when done, is to improve the property registries. What does this improvement mean? Are the registries' property records being maintained? What proportion of transactions are 'informal', namely outside the registries?

3. How have the implementation techniques and approaches affected activity success?

What are the costs of implementation? What techniques have been used to reduce cost and increase the speed of completion of work?

This country brief has been written to assist in the assessment of USAID's investments in land markets and property rights in Albania since the early 1990s. The brief was compiled by drawing on a range of sources available from the Land Tenure Center, USAID, academic journals, the internet and a variety of policy documents and assessments. Section 2, below, presents a brief overview of Albania and its agricultural sector. In section 3 we outline some critical challenges for implementing land policy in Albania. In section 4 we examine the evidence of the existence of land markets since the fall of communism and prior to USAID involvement in the land registration project. Section 5 provides an overview of the main interventions related to land and property markets. Following this, section 6 reviews the main issues and conclusions that have emerged from various evaluations and assessments of the USAID land market project. Some conclusions and recommendations are presented in section 7.

## **2. A PROFILE OF ALBANIA, ITS AGRICULTURAL SECTOR AND AGRARIAN STRUCTURE**

Albania is a country with a population of around 3.4 million (World Bank 2002) and a total land area of 28,000 km<sup>2</sup>, of which one quarter or 7000 km<sup>2</sup> is arable land (Jazoj et al 1996: 2). In addition to this 15 percent or 425,000 hectares is pastoral land and 1,050,000 hectares is forest land (Kodderitzch 1999: 3). Albania is divided into three geographical regions including: a) the coastal plains, constituting 44 percent of the arable land and considered to be the most fertile land with the highest agricultural potential; b) the hilly or foothill areas, constituting 37 percent of the arable land; and c) the mountainous areas, constituting 19 percent of the arable land (ibid. 1999: 3). Furthermore, around 58 percent of the country's population lives in rural areas, despite a decrease from 2 million people in 1989 to 1.8 million in 2001 (INSTAT 2001, cited in Childress 2001).

The agricultural sector is significant for the Albanian economy accounting for approximately 35 percent of GDP, see appendix one, and 40 percent of total employment (ibid. 2001: 5). The main agricultural commodities include oilseed, sugar and wheat, the latter being the staple crop (Kodderitzch 1999).

### **2.1 ALBANIA: OVERVIEW**

Albania is a Balkan country situated across the Adriatic sea from Italy. It is bordered on the southeast by Greece and Macedonia and in the north by Kosova, Montenegro. It is a small country, only 28,000 square kilometers, with a population of only 3.4 million. The northern part of the country is characterized by rugged mountainous terrain which historically has been inaccessible and thus has retained many older traditions of the country. By contrast, the south is flatter and is subject to more influence from other countries due to trade, successive invasions, and refugee movements.

Ethnographic studies carried out in the late nineteenth century and during the first half of the twentieth century have documented the strong family features of Albanian communities. Albanian customary law, which was traditionally governed by oral customary codes called *kanun*, identifies the family, composed of members of a particular family who live under the

same roof at any one point in time, as representing the basic and most important unit in the social and public order since the beginnings of Albania's recorded history (Vokopola 1968). Since the household unit is customarily based on patrilineal descent, the married sons (with their families) of a married couple would live under the parents' roof. In this way extended families, often comprised of several brothers and their descendants, would form a single residential and economic unit (Whitaker 1976). The survival of this large family unit over an extended period of time is due to a variety of factors, one being the need for mutual defense, especially in the north where the mountainous landscape does not favor centralized rule of law and police functions.

As well as having a strong family networking system at the foundation, Albanian society has been characterized as patriarchal, where a male head typically assumes the role of decision maker and financial controller, and patrilineal, where the membership in a family group is reckoned through the male line. In traditional society women gained access to property through their relationship to either a father or a husband and in the context of a family. They had no right to property inheritance. In fact, the right to inheritance was not a concern for most women since the assumption was that they would be provided for throughout their lives. It was thought that if a married woman claimed property from her father's estate, her husband (who belongs to another clan, or *fis*) would subsequently control that piece of land. As a result, political structures based on localized *fis* ties would become undermined, since the borders between local communities would become less clear (Backer 1983).

With regard to ethnicity, in contrast to many other contemporary Balkan states, such as the former republics of ex-Yugoslavia, Albania is relatively homogeneous ethnically and there appears to be no major concern regarding potential ethnic conflict (Miall 1995). Of these ethnic groups, the Greeks have been and are likely to continue to be the only minority in Albania large enough to have any substantial political, economic, and social influence. This potential ethnic tension is heightened by the southern location of the majority of the Albanian Greeks, close to the neighboring Greek state, which has in the past claimed part of the territory they occupy. However, as discussed below, this potential influence continues to be restrained by the lack of attention provided to ethnic minorities in current Albanian governance. A commonly cited social cleavage within the dominant ethnic Albanian population is, however, sometimes highlighted as a possible cause for concern. This social cleavage stems from a linguistic and cultural differentiation between ethnic Albanians living in the North and South of the country (the Ghegs and the Tosks). Nowadays this distinction is exacerbated by political manipulation (Vickers and Pettifer 1997).

## **2.2 A HISTORICAL OVERVIEW OF LAND TENURE IN ALBANIA**

### **2.2.1 Land tenure prior to communism**

Pre- communism the land tenure system in Albania did not witness any dramatic changes despite five centuries of domination by the Ottoman Empire. Feudalism existed since medieval times together with free peasants and serfs. The Ottoman administration mainly redistributed wealth from unruly landlords to trusted military officers or employees of the state. In less accessible areas, traditional rules continued to survive and control the life of inhabitants.

The origin of large holdings in Albania emerged in the fifteenth century when the country was almost completely conquered and dominated by Turks. All of the land was proclaimed state

owned and administered by the Sultan, who had the right to distribute land use rights to high military, administrative or religious officials with the condition of paying taxes and recruiting peasants for war efforts. Lords could lease out the land to peasants and ask from them various obligations in the form of payments in kind or cash. In addition, the Sultan granted to land barons some land in ownership as a reward for special services to the state. The 16th century marks the beginnings of *latifundium* formation. The *latifundium* was a large private landholding usually held by a land baron and unconditioned by military obligations to the state. The *latifundia* became larger through use of force, purchasing land, debt payment, or new areas of land put into cultivation.

Towards to end of the Ottoman rule, the ‘*ciflik*’ tenure system pre-dominated in over half of Albania whereby peasants were obliged to contribute labor and produce either to private landlords, the state or religious institutions (Cungu and Swinnen 1998: 1). The structure of land ownership in 1912 is depicted in Table 1 below.

**Table 1. Agricultural land ownership in the year 1912**

Land Ownership	Surface Area	
	Hectare	Percentage
State and Sultanate Property	56,287	14.7
Latifundist property	140,000	36.7
Farmers property	171,789	45
Religious property	13,700	3.6
Total	381,776	100

Source: Aliko 2001

After the proclamation of Independence in 1912, the Albanian state confiscated the *latifundia* of the Turkish state but did not touch the land of private persons. Thus, although private ownership of agricultural land predominated, land distribution was very unequal, with attempts towards agrarian reform amounting to little: 3 percent of the population owned 27 percent of the land (ibid. 1998: 2). A few landlords, the state and religious institutions owned most of the fertile land, which was organized into large estates (ibid. 1998: 2). Table two below illustrates that small and medium landowners owned 60 percent of the arable land, whereas 14 percent of the rural population were landless (Pata and Osmani 1994: 85). Transactions at the time were characterized by newly forming land markets and the division of large estates through inheritance.

**Table 2. Structure of Agricultural Land Ownership prior to Agrarian Reform, 1946**

	Number	Percentage	Hectares	Percentage
State-owned land			50,000	12.7
Large landowners	4,720	3.04	105,587	26.86
Medium and small land owners	128,961	83.1	237,666	60.43
Landless farmers	21,544	13.9		
Total	155,225	100	393,353	100

Source: Aliko 2001: 3.

### 2.2.2 Land tenure under communism 1945-1990

In 1945, the Albanian Communist Party initiated the formation of state farms on the *ciflik* land, so that former tenants became state farm workers (Cungu and Swinnen 1998). The Agrarian Reform Law of 1945 led to the redistribution of over 170,000 hectares of land from large land owners to 70,000 families, both to those that had previously been landless and to those with fewer than 5 hectares of land (Stanfield et al. 1992). Large and medium landowners were entitled to retain only 5 hectares of arable land (Cungu and Swinnen 1998). This redistribution was legitimized by supplying families with documentation called 'tapis'. However, although ownership rights were transferred in this way, rights for the sale or rental of land were not recognized and hence this stalled on the development of land markets (Aliko 2000: 4).

The subsequent collectivization of land in 1946 meant that all land and assets had to be pooled in the Agricultural Production Co-operatives (APCs) and State Farms (SFs) with the view of achieving agricultural self-sufficiency. In this way by 1976 all land had been nationalized and as illustrated in table three below by 1980, 76 percent of the agricultural land was cultivated by the APCs, 21 percent by the SFs and only 3 percent was privately owned. This resulted in widespread inefficiencies and food shortages by the mid-1980's and the continued disintegration led to the virtual collapse of the agricultural sector in the early 1990's.

**Table 3. Arable land per sector, 1950 –1990**

Year	State sector		Co-operatives		Private sector		Total
	Ha (000)	%	Ha (000)	%	Ha (000)	%	
1950	13	3.2	21	5.4	357	91.4	391
1960	65	14.2	330	72.2	62	13.6	457
1970	124	20.7	454	74.8	21	3.5	599
1980	151	21.4	532	75.9	19	2.7	702
1990	170	24.1	504	71.6	30	4.3	704

Source: Statistical Yearbook of Albania 1991, cited in Pata and Osmani 1994



### 2.2.3 Land reform in the 1990s

In the early 1990's, after nearly fifty years of a centrally managed command economy with the state as the sole owner of immovable property, the Albanian government made a firm commitment to instituting a market economy and a democratic political system. A key aspect of this transition is the transfer of state-owned property, particularly immovable property, into private ownership. Legislation promotes the concept of equal rights for all Albanians including the right to own private property.

The privatization of ex-cooperative land was formalized with the passage of the Law on the Land in 1991 (Land Law No. 7501 of 19/07/1991. [Tirana]: Republic of Albania). The law was developed solely under Albanian initiative, with little foreign assistance. The law specified that land was to be distributed to the families that resided on the cooperatives at the time of the law's passage. The law however did not provide for properties to be restituted to families affected by the Agrarian Reform (Aliko 2001: 7). The Village Land Commissions distributed approximately 420 collectivized ex-cooperatives' agricultural land to 383,600 rural households (Stanfield and Jazoj). The law required that a "quota" of land be calculated on a per-capita basis. The number of people living in a particular village was determined and the per-capita allotment of land of differing qualities was calculated. The ownership certificate (*tapi*) issued to each family indicated, among other things, the name of the household head, a list of parcels assigned to the household, their area, the main use of land for each parcel, and the owners of the bordering parcels. Decisions over land distribution and certificates of ownership, were issued by the elected village Land Commissions. The new owners received the land free of charge. The *tapi* were then registered by the Cadastral Offices in rural areas. The law also allowed for the distribution of land of the SFs to the state farm employees for free through "in use" *tapis* (Bloch 1998).

The rationale for the method of land distribution is not completely clear. Some people argue that the method was political; others say that it was not well defined (Cunga, 1995). However, discussions with officials who were involved in the formulation of the Law on Land suggest that there was in fact a rationale for the distribution. A dominant view held was that at the time of passage the law provided a fair and equal distribution of property rights for all the rural population of Albania. This rationale is implied in some laws.

In assigning land ownership and use rights, furthermore, the Land Law did not recognize land ownership, size and boundaries as they had been prior to the collectivization carried out under the previous regime. According to Aliko (2001) the Parliament and the Stability Government in 1991 explained the exclusion of the ex-owners and their rights with arguments like: the area of agricultural land per capita was very small- 0.22 ha/person (maybe the smallest in Europe), the majority of the population was living on farms (64%), the population had tripled compared with the years of the Agrarian Reform, there were big changes and a demographic shift between the different regions and the transformations in the country's infrastructure and geography created serious problems in the identification of properties and legal documents associated with them from before 1946.

The resulting opposition by the pre-1945 owners led to the enactment of the Law on the Restitution and Compensation of Properties of Ex-Owners, Law No. 7698, in 1993 and creation of the district Restitution Commissions. This law enabled ex-owners to have their ownership of urban land recognized. Alternatively ex-owners could be compensated through the allocation of agricultural land still owned by the state or by rights to land in areas of potential tourist

development. Furthermore, as most agricultural land was allocated through the *tapi* system and in these cases restitution did not apply, the ex-owners of this land were to be compensated as described in Law No. 7699, date 21/04/1993: "On Compensating the Value of the Ex owners of Agricultural Land." That law recognized property rights of ex-owners of agricultural land for the purposes of granting compensation for the values for the agricultural land, to all owners of such land at the time of Law No. 108 date 29/08/1945: "Land Reform." The amount of compensation was to be calculated for land areas up to 15 hectares. This law has not been effectively implemented.

### **3. CHALLENGES FOR LAND POLICY/TITLING PROGRAMMES POST-LAW 7501<sup>1</sup>**

#### **3.1 FARM HOLDING FRAGMENTATION**

One widely accepted and documented outcome of land reform throughout Eastern Europe, especially Albania, has been extreme land fragmentation (see Sabates-Wheeler 2002 for a discussion of this). Before the Albanian land reform in 1990, 420 enterprise managers farmed approximately 18,000 fields, averaging 36 hectares, and usually grouped into single, contiguous enterprises. Adhering to a notion of distributional egalitarianism the Law on Land provided for a distribution of agricultural land to all those who had lived and worked the land under communism. After the reform, there are 480,000 families which farm approximately 1.8 million small parcels averaging 0.25 hectares each parcel (see Stanfield and Marquart, 1997).

A survey report on fragmentation and consolidation in Albania by Lusho and Papa (1995), indicates that the main fragmentation problems relate to small size of parcels and their spatial orientation in relation to their homestead. Lemel and Dubali (1996) report three potential problems of land holding fragmentation in Albania: many parcels, size of parcels and, distance of parcels from the homestead and from one another. Results from these two studies suggest that the high levels of fragmentation resulting from the land distribution of 1991 have created serious and wide ranging problems for farmers and that they are negatively related to land use. For instance, land use is reduced due to parcels located far away from the homestead. Lemel and Dubali(1996) found a positive correlation between distance of the parcel from the house and the percent of land left uncultivated. Negative indirect effects of land fragmentation could imply that many potential farmers do not even begin to farm. These effects encourage both temporary and permanent non-involvement in crop farming however they are difficult to measure, as often a rural survey will only include active farmers in its sample.

If physical land fragmentation was the only problem resulting from privatization then well functioning and easily accessible land markets would be the answer to promoting agricultural productivity as the land would be transferred to those who are most capable of farming it. This has been one of the underlying motivations for the Albania land titling and land market program. Viewed through the lens of poverty reduction, however, the evidence clearly shows that that land market programs do not comprise a sufficient condition. There are three fundamental reasons for this.

First, land markets are generally not easily accessible, especially for poor people. In fact they are in many countries characterized by high transactions costs associated with bureaucracy, form

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<sup>1</sup> Much of the arguments in this section come from Sabates-Wheeler (2003)

filling, time spent waiting in queues, notary fees, technical surveys and high financial costs. For poor people this is especially problematic as the registration office is likely to be located in the city, far away from town, they may not have enough money to enter the market and they are likely to have less access to information about land prices than their urban colleagues. Evidence from a wide range of transition countries show substantial constraints and problems to quickly implementing land registration systems (Stanfield, 1999; Kideckel, 1993). With low institutional capacity, insufficient administrative and technical capacity to support new land management systems, and with land cases swamping the courts, 'formal' land consolidation via land markets is not a feasible possibility in the short, or even medium term. Evidence from Albania indicates that landowners are reluctant to use the formal avenues for land transactions due to the high financial and time costs involved. A survey conducted by the Wheeler in 1999 revealed that total costs for a transaction in the district of Lushnje cost each party approximately 70\$. There are many cases where owners resort to informal (extra-legal) transactions, especially in rental markets, as they perceive less hurdles this way. In the longer run these transactions will undermine the registration system and also create problems for new owners in terms of credit access and thus investment potential.

Second, the way that land reform and land policy has been implemented emphasizes the problem of physical land structure at the relative neglect of other structural problems in agriculture. Ignoring other dimensions of farming constraints is likely to lead to a failure in current strategies due to a lack of emphasis on improving complementary services for land use. Of the Albanian land consolidation initiative, Childress (2001) points out that, 'by not finding ways to assist activity consolidation and formations of producer associations (through educational mechanisms, provision of credits and facilitation of input supply, production technology and marketing services) the pilot land consolidation project is missing one of the main areas of meaningful land consolidation' (pp16). The main result from a survey on attitudes to land exchange and consolidation in Albania showed that farmers express a desire to consolidate their land holdings. This desire remains unfulfilled in view of issues of tenure insecurity; a lack of an established and accepted system of exchange compensation; lack of infrastructure support to justify potential exchanges and the high costs of formalizing the process (Wheeler and Lushaj, 1999). Seventy percent of those surveyed said they might endorse parcel exchange if the transactions costs were lower. From meetings with 150 farmers in Albania, Childress (2000) finds a hypothetical interest for physical consolidation among farmers. 'But land consolidation was strongly viewed as only one piece of a desired strategy to reduce risk, increase productivity and improve value added to agriculture through infrastructure, marketing, credit provision and crop switching' (pp5).

Third, when the first two problems above are combined – high transactions costs associated with land registration and exchange and constraints in complementary land markets –we observe that income-poor landowners become the most disadvantaged group of landowners. They are unable to improve their livelihoods through farming due to missing markets and lack of support and unable to transact their land due to the huge costs associated with land alienation. In sum, the evidence shows that focusing heavily on improving land markets at the relative neglect of rural development has poverty-increasing effects, one manifestation of which involves distress sales of land by very poor farmers, leaving them without a means to subsist. Some governments have introduced a moratorium on land sales for exactly this reason. On the other hand, restricting sales without a large effort to support small farm initiatives is likely to lead to poverty lock-in where poor farmers are unable to accumulate enough assets to climb out of poverty ( See Sabates-Wheeler(2002) for the case of Romania). Improving complementary factor markets without

enabling some land exchange mechanisms may also prove problematic as physical land fragmentation can act as a barrier to efficient production.

### **3.2 SOCIAL EQUITY IN LAND RIGHTS ACCESS**

Any pro-poor land policy necessitates that poverty be conceptualized as a multi-stranded concept that encompasses absolute poverty and the lack of basic needs, but also notions of social exclusion and vulnerability that lead individuals and groups to be excluded from avenues that would allow them to move out of poverty.

The Albanian Government's formal commitment to equal rights for men and women is high. Whether rhetoric or not there has been a large push to bring women into a more equal status with men in the realms of work, education, health and other areas. Among many efforts the Albanian Constitution makes explicit reference to the equal rights of men and women (1998, Article 12) and Albania signed the CEDAW convention in 1994. Commitments to the pursuit of equal rights for men and women have also been made in the international community (USAID, RDI, DFID).

A Stakeholder analysis for the IPRSP in Albania (2000) highlighted that women were among the four most vulnerable groups in Albania; the youth, the elderly and urban informal settlers being the other groups<sup>2</sup>. The document acknowledged that since the transition, there has been some reversion to traditional forms of local governance, which would reduce the opportunities available to some women, especially in rural areas. Poverty is predominantly a rural phenomenon with the inability to make an adequate living attributed explicitly to the small land holding sizes resulting from the land privatization. The poverty profile presented in the GPRS indicates that the massive migration of young and adult men has left women in rural areas particularly vulnerable. It is clear then that women, especially rural women, are in more vulnerable situations than men with regard to their livelihoods.

Albania legislation recognizes both individual and family landownership rights. Some legislation such as the Civil Code (passed by Parliament in August 1994), and the Private Property Law (No. 7512 passed in August 1991) recognizes private and individual property and the right of all citizens to own and inherit property. Family landownership was tacitly established, as we saw, in the Law on Land. In addition, the Civil Code classifies agricultural land as family landownership (Article 222), not to be subdivided among family members except under specific conditions (Articles 226–228). Thus, while a series of laws guarantee individual property rights to both men and women, husbands and wives, sons and daughters, some provisions within these same laws establish family (not individual) farmland ownership.

In addition to potentially conflicting situations within statutory law regarding property rights, there is the difference between what are every person's legal property rights and what people perceive to be the proper allocation of property rights. In other words, there is a difference between formal legal property rights and de facto or customary property rights. Results from several surveys and unstructured field interviews reveal that customary traditions of patrilineal inheritance and patriarchal norms, which were so fundamental to Albanian society prior to and to some extent during the socialist regime, are re-emerging as the dominant form of social structure (Sabates-Wheeler, 1998). While family landownership, as a tenure structure and as stipulated in

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<sup>2</sup> <http://www.worldbank.org/participation/pap2box5.html>

Albanian statutory law, does not necessarily exclude persons from property ownership, customary family ownership *as practiced* in Albania together with traditional norms and practices with regard to family and gender may exclude some family members from exercising influence over the use and disposition of family land; in other words, some family members may not be effective and functional owners. This situation can create a tension with regard to property rights when persons perceive that their legal property rights are not recognized or are being denied them.

The potential for conflict around property rights, therefore, arises out of these two situations: between individual and family property systems as stipulated in legislation, and between legal and de facto practices regarding property rights. Whether landed property is owned individually or as family property is not the issue, but rather whether all persons have equal opportunity to exercise their rights to property within that system.

Based on available evidence, there is reason to be concerned for family members' equal rights as Albania makes a transition to a market democracy. The family structure in Albania is changing dramatically as the family becomes more nuclearised. Evidence also points toward a breakdown of the centrality of the family to Albanian society. There are documented incidents of heads of household getting drunk (or gambling) and giving away the farm family land on the presumption that it is theirs by traditional inheritance and that theirs is the only name on the title deed. Women have to assume a farm manager position since many men are migrating from the country either permanently or seasonally. Some villages are experiencing up to 30 percent migration. The heads of household, who are the holders of the title, can migrate leaving the family without the power to prove ownership of property. They may also leave their families without the right to rent or mortgage the land. Ironically, the family may not possess the security of ownership that the law intended. Non-recognition of equal rights for family members other than the household head presents a problem, for example, when the farm manager is not the household head, particularly if the manager is a woman working under the gender biases of a patriarchal society. As market and land transactions become more common, lack of clear ownership rights will put these women farm managers at a disadvantage because they will not be able to participate in commercial transactions, thus compromising their production potential. Their ownership rights need to be explicitly recognized and protected if they are to efficiently manage the family farm enterprise.

Currently a legal crisis would not appear to be imminent since many of these problems are resolved according to customary tradition before coming to court, but a large number of cases are coming to court where individuals are demanding their rights. Due to legal ambiguities, the courts are not able to deal swiftly with claims and thus the legal system is perpetuating the already existing public perception that it is inefficient. These emerging cases show the family property model of protection as practiced in Albania is becoming increasingly inefficient and point to potential problems in the future.

The reason that many cases do not currently reach the courts is due in part to an almost complete lack of knowledge by the general population of current law. In addition, those people who do take inheritance cases or subdivision cases to court experience lengthy hearings and judges unable to interpret existing laws in an accurate way. This inefficiency signals that it is a costly and timely procedure to go to court and, therefore, the public tends to avoid using the legal path. As long as ambiguities persist it is likely that customary practices will dominate, implying that some people are not able to exercise the property rights that government intended to give them.

It is not clear is what will happen to family-farm property as land becomes an asset and land transactions increase. The opening up of land markets will almost certainly expose the tensions between customary law and formal legislation and the contradictions contained within formal law.

### 3.3 INFORMAL SETTLEMENTS IN PERI-URBAN AREAS

#### 3.3.1 Investment behavior

A construction boom, fuelled by an estimated half a billion dollars a year remittance flow, started in Tirana after 1992 (Felstehausen). Informal settlements were created in the peri-urban areas outside the traditional city boundaries of Tirana, which had formerly been state farms and enterprises, due to the influx of rural migrants after 1991. This land was occupied as a result of its accessibility to the transportation routes, and as the proximity to the city allowed migrants to access water and electricity supplies (Driscoll, Ersenkal and Iadarola 1994, cited in Felstehausen 2002: 6) as well as send their children to school. The development of informal settlements, is evident from the six-fold expansion of the land area of Tirana (Table 1 below), and the tripling of the urban population since the end of communism (Table 2 below).

**Table 3.3.1. Ten-year Expansion in Land Area Occupied by Tirana**

Old City center of Tirana, 1990	1,500 ha
City of Tirana within official boundary, 1992	3,500 ha
Metropolitan Tirana counting new construction area, 2000	10,000 ha
Contiguous metropolitan area with communities and villages	21,000 ha

Source: District of Tirana Cadastre Office, and Map projections, cited in Felstehausen 2002: 7

**Table 3.3.2. Growth in Urban Population in Tirana, 1945-2002**

Population in 1945	60,000
Population in 1990 under central planning	225,000
Population of total metropolitan area in 1995 (estimate)	425,000
Population of total metropolitan area in 1999 (estimate)	600,000
Current extended metropolitan area 2002 (estimate)	700,000

Source: (Adjusted from) District of Tirana; Structure Plan for Greater Tirana, 1995; urban feasibility studies, and Government of Albania reports, cited in Felstehausen 2002: 3

The privatization of property in Albania created a dual system of investment in land. On the one hand an informal system was generated, based on customary land tenure. Investments in this informal economy tended to be focused on land and buildings, as these were “the only resources that [were] accessible and durable for ordinary working class people” (7). On the other hand wealthier people operated in the formal economy, following corporate and government regulations, where the options for land investments including stock markets, savings banks, pension funds and new businesses.

### **3.3.2 Tenure security and the regularization of the informal settlements**

The collapse of communism saw the mass migration of populations mainly from the mountainous areas to the suburbs of the cities mostly for economic reasons. The majority of informal settlements are located in the former State Enterprise lands and industrial areas. Under the various land privatization laws workers and their families were granted ‘in use’ rights to designated parts of the State Enterprise lands. The enactment four years later, of Law No. 8053 of 21/12/1995 on ‘Transfer in ownership without compensation of the agricultural land’, meant that people with ‘in use’ rights were eventually recognized as legal owners of the State Enterprise land. Some of the land in the industrial areas was further granted as compensation to ex-owners under Law No. 7698 of 1993 on ‘Restitution and compensation of the properties of ex-owners’ who had been expropriated from this land.

The four years between 1991, from the privatization of land with the enactment of Law No. 7501 and the Decision from the Council of Ministers No. 452, to the legal recognition of the former State Enterprise workers as owners of the former State Enterprise lands under Law No. 8053 in 1995, lead to insecurity in the ownership and transaction of this land (10). This insecurity was characterized by a number of *de facto*, existing in practice, but not *de jure*, not legally recognized, owners of land. As a consequence of this, the current status of land ownership in the informal settlements is characterized by three types of land owners (Aliko and Sherko, 2002):

#### **a) Legal owners:**

This includes: i) the state; ii) private owners under Law 7501, Law 8053 and Law 7698 and; iii) private owners, who were formally compensated for being evicted from their land due to natural disasters or state projects. In the second category, informal sales of property means the owners remain *de jure* owners of the sold land .

#### **b) Illegal or informal buyers:**

This includes buyers who bought land informally from legal private owners, as well as those who subsequently bought land from the former. Tenure insecurity for both of these categories of buyers is characterized by the fact that they possess no legal documentation certifying these transactions or their ownership, although some may possess informal documentation.

#### **c) Illegal owners:**

This includes people who have illegally settled on: i) state owned land or; ii) land owned by private individuals. Both of these categories possess no documentation certifying ownership.

From these categories it is apparent therefore that legislation until 1995 did not offer adequate tenure security, especially for the buyers of land. In other words, whereas the Laws 7501, 8053

and 7698 secured initial ownership of land, they did not offer security in the transaction of land. Legal and institutional failures in developing property laws after 1990 forced the majority of peri-urban claimants to fall back on the informal economy and apply customary methods of documentation and exchange. There is limited legal security of ownership and transactions therefore in the informal peri-urban areas.

Furthermore, the dual nature of land investments outlined above, both formal and informal, is likely to limit investments as well as transactions between the two. The regularization of informal settlements, therefore is likely to enhance opportunities for transactions with and investments in the peri-urban areas by entrepreneurs from the formal economy. Stanfield and Bloch state for instance that private ownership and security of rights “gives entrepreneurs opportunities to acquire land from owners through sale or lease, hence allowing productive investments to be made” (2002: 5).

De Soto further argues that when poorer people are blocked from participation in the formal economy, the potential for economic growth is stalled, impacting on the whole economy (2000, cited in Felstehausen 2002: 12). Private property, he argues, is important in reducing the size of the informal economy. As the informal economy is formalized, the economic benefits from these activities can enhance economic growth.

On the other hand, whereas formalization of tenure security may be conducive to the development of land markets, this may also have implications for the taxation of the residents in the informal settlements, through taxation on inheritance of land for instance. Felstehausen states that De Soto’s argument does not take into account the fact the informal sector has arisen as a means of “escaping the extractive forces of the formal economy [such as taxation], which accumulate capital for global activities without returning comparable benefits to those who created the surplus in the first place” (Francis 2000, cited in Felstehausen 2002: 12).

#### **4. EVIDENCE OF PROPERTY MARKETS IN ALBANIA**

In seeking to identify evidence of land markets in Albania, this literature review draws largely on the circumstances after the wake of the privatization of agriculture in 1991 until the initial interventions to enhance land markets in Albania, which effectively began in 1994 with the enactment of the Immovable Property Registration Act, detailed in the section 5 below. Section 4.1 reviews evidence of formal property market activity in rural and urban areas, while section 4.2 summarizes evidence of ‘informal’ property transactions.

##### **4.1 FORMAL MARKETS**

As a result of the portioning of land on a per capita basis under Law 7501 it was estimated that in 1993, 383,069 households would have control of 470,086 hectares of ex-cooperative land (Stanfield 1994). The new household holdings were fragmented into at least 1.9 million separate land parcels, which included an average of about four agricultural parcels and one house plot for each family.

This process was to be followed in 1992 by the expected allocation of full ownership rights to 33,500 hectares of ex-state farmland, and usufructuary rights to 96,177 hectares of reclaimed or new agricultural land. It was expected that the distribution would benefit 106,000 individuals and produce 300,000 separate parcels of land (Table 4). Therefore, whereas ex-state farmland was



distributed like the ex-cooperative land, only user rights were distributed for other land that had been owned by the state, whilst the state retained ownership rights (Stanfield 1994: 135). This meant that despite the privatization of the use and ownership of land, the 1991 Law prohibited the private buying and selling of such land previously owned by the state. This situation changed however in 1993, with the passing of Law no. 7715 which permitted the renting and leasing of agricultural land. It was not until 1995 however that the sale of agricultural land was permitted under Law no. 7983.

This restriction on ownership of privatized agricultural land was in contrast to the privatized housing units, which did not have restrictions on their sale or rental. The vast majority of these dwelling units in urban areas were state-constructed and publicly owned buildings. In rural areas most housing had been built by their occupants. Privatization entailed the transfer of ownership from state to occupants of dwelling units (Law 7652 of 1992). The resulting profile of privatized land ownership and use after 1991 is depicted in the table below.

**Table 4. The 1993 estimate of the number of family and individual rights to real property, following completion of privatization programs**

	Number of new owners* (%)	Number of new properties (%)
Ex-cooperative land	383,000 (30%)	1,900,000 (63%)
Ex-state farm land	106,000 (8%)	300,000 (10%)
Urban dwelling units and other properties	800,000 (62%)	800,000 (27%)
Total	1,289,000 (100%)	3,000,000 <sup>3</sup> (100%)

Source: Stanfield, D (2002)

\* Families as well as individuals and companies

Furthermore as a result of privatization, the number and size of private farms was fairly standard, with an average of 3.3 separately located parcels for each farm. Farm sizes in turn averaged around 1.0 hectares, ranging from 1.3 hectares in the more fertile valleys and foothills to 0.8 in the mountainous areas (Grace 1995, cited in Cungu and Swinnen 1998). Land tended to be scattered, with varying levels of accessibility and quality leading to a fragmentation of land use (Childress 2001: 2).

A survey entitled the ‘Land Market Project Baseline Study’ carried out in Albania in 1996 found that there was “little evidence that a rural immovable property market [was] developing in Albania” (Bloch 1996). Furthermore as illustrated in table 5, of the 3541 land parcels included in the study, only 35 had been bought by their owners and 7 had been rented. Fifteen of 35 had obtained by exchange of another parcel, a figure expected to be higher given the extent of fragmentation and restrictions of land sale and purchase (Bloch 1998). In addition to this, of the

<sup>3</sup> An estimate by the Project Management Unit in 2001, estimated the number of properties to be registered to be closer to 4 million rather than 3 million as stated here (Gaynor and Bledsoe 2000: 4)

35 bought parcels 29 had houses on them, meaning initial market activity predominantly centered around housing rather than farm land. This may have been partly as a result of the legal restrictions on the sale and purchasing of agricultural land.

**Table 5. Purchased and rented parcels by year of transaction**

	1990	1991	1992	1993	1994	1995	Total
Purchased	8	8	6	7	0	6	35 (1%)
Rented in	0	3	1	0	1	2	7 (0.2%)
Other means of acquisition	94	1,914	798	542	66	85	3,506 (99%)

Source: Bloch 1998

Findings from a further study undertaken by the Land Tenure Center (LTC), presented in Table 6 below, indicate different evidence from an urban context. In this case, whereas construction outweighed the acquisition of properties in Tirana during the communist era between 1945 and 1990, post-1990 acquisitions are shown to have risen above the numbers of new constructions (Stanfield, Childress, and Dervishi 1998). It was concluded that this in turn was indicative of “a significant market for conveying and transferring property” at this time (Stanfield et al. 1998: 10).

**Table 6. Year of construction and acquisition of buildings in Tirana, Albania**

Year	Construction	Percentage (%)	Acquisition	Percentage (%)
Before 1945	400	21.7	142	8.1
1945 – 1990	1186	64.4	1001	56.8
1991	33	12.8	67	10.8
1992	30	11.7	82	13.2
1993	18	7.0	52	8.4
1994	67	26.1	96	15.5
Total:	1843	100.00	1762	100.00

Source: Stanfield et al. 1998

In the early 1990s the privatization of land alone was insufficient to ensure the creation of functioning land markets. In particular, potential property buyers needed to identify property owners and in Albania until 1992 there were no institutions for carrying out this function, but only for recording the use of land and building properties by different actors. In addition to this, institutional capacity was being over-stretched due to the complexity of privatization and the

large numbers of new owners. There was therefore a need for a new system to record rights of ownership, the details of which are outlined in the section 5 below (Stanfield 2002: 1).

Recent evidence indicates that property transactions are becoming more common. There were about 10,072 property transfers and leases registered in 2000 (or about 0.3% of about 3 million private properties created since 1991). In that same year there were about 3,524 sales of agricultural land parcels, or 0.2% of the 1.78 million privatized parcels (Stanfield et. al., 2002).

The complex and ambitious privatization effort moved forward rapidly, with the estimate from 2000 about the results shown in Table 7. Clearly the ownership of immovable property has been distributed throughout the population, although there is a high fragmentation of agricultural land (about 5 parcels per family).

There are (at the end of the year 2000) approximately 4 million properties, publicly and privately owned in Albania, and the number keeps growing as public properties are subdivided and privatized and as privately owned properties are subdivided.

It should be noted that in the Albanian case, there is a very dynamic “informal” property development activity. People occupy land, often on the urban periphery, build their homes and engage in market transactions, with minimal documentation and without the legal registration of such transactions (see Aliko and Sherko, 2002). Incorporating these properties into the IPRS is a major challenge, and at the same time their existence and the vibrancy of the market in such properties raises questions about the effectiveness of the IPRS model.

One of efforts made by the PMU in its final phases of work in 2000 was to identify the main types of properties that have emerged from the privatization process and from the spontaneous privatization which has occurred in urban and peri-urban areas. Table 7 shows the variety of situations which had to be programmed for the PMU to complete its first registration work.

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<sup>4</sup> See Stanfield et. al., 2002

**Table 7. Estimate of Number and Types of Immovable Properties as of the end of December 2000 (Source: Stanfield et. al., 2002)**

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

## 4.2 INFORMAL PROPERTY MARKETS

Market activity in the former State Enterprise lands was initiated in 1992, when former workers were granted 'in use' rights to the land. During this transition period, there was a great demand to buy land and use it for the construction of housing. At the same time, however, in so far as the sale of property did not become legal until the enactment of Law No. 8053 in 1995, informal and illegal transactions in land, in the forms of sale and gifts, characterized the property market in informal settlements until this time.

Informal or illegal transactions typical of informal settlements included on the one hand migrants who bought land from private owners under Law No. 7501 and 8053, some of whom then sold this land, and constructions on the land, to other migrants. According to Reci for instance, about 70 per cent of the residents of the settlements bought the land on which they constructed their

houses (1999, cited in Aliko and Sherko 2002: 6). On the other hand, illegal occupiers of land that was owned by the state or private owners sold this land to other migrants or gave this away as a gift.

Aliko and Sherko point out that in the latter case, where migrants have illegally occupied land, “the buying-selling process has been very intensive due to the fear of occupants that [the] state would one day take over that property” (pp.7). Jazoj and Kelm found this to be the case in the zone of Frutikultura in Kamza for instance (2001: 12). Later Aliko and Sherko observe a similar phenomenon, in that market transactions and investments in land become more “intensive”, but in this case as a result of greater tenure security (2002: 5). Specifically, they state that following the enactment of Law No. 8053 “families and individuals saw more possibilities to use agricultural land more intensively for construction and sale.”

This suggests that intensity of market transactions or investment in land may be as much as a result of tenure security as it is of tenure insecurity. This in turn may appear to contradict the hypothesis that private ownership and security of rights “gives owners or rights holders the ability to recoup investments they make in their properties, hence providing incentives for investments” (Stanfield and Bloch 2002: 5) as insecurity of rights may also lead to incentives for investments and transactions in land. Evidence of market dynamism and investments in land cannot therefore be associated exclusively with security of rights, in an informal or illegal setting.

Investments in informal settlements are characterized primarily by the construction of housing. As noted earlier, during this transition period, there was a great demand to buy land and use it for the construction of housing. At the same time however many constructions in informal settlements were illegal, as these were carried out without construction permits, legally required under Law No. 7693 (of 6/4/1993) on ‘Urban Planning’. Aliko and Sherko point to the fact that where migrants have illegally occupied land “in order to ‘prove’ their ‘ownership’ [they] have...constructed very simple houses (often only the foundation)” (6). Jazoj and Kelm found this to be the case for instance in the zone of Bathore 1 in Kamza (2001: 7). Later they observe that after 1995, legal recognition of ownership led to an increase in the construction of buildings. These observations therefore lend similar conclusions as illustrated in the case of the market dynamism above, namely that investments in land can contradictorily be evident of both tenure insecurity and security. Aliko and Sherko finally observe the limitations in the investments in the informal settlements beyond housing. This included for instance the lack of adequate infrastructure including roads, sewage and water systems, as well as the lack of health and education facilities (7).

The hesitation of people in the informal settlements to participate in formal land market transactions is evident from the findings of Jazoj and Kelm in the zone of Former Parcel No. 93 in Kamza, who point out that this was due to the fact that “they did not want to pay the fees and the transfer tax on the sales prices” (2001: 10). Felstehausen presents the argument that formalization of land markets must necessarily take into account the interests of the communities in the informal settlements. The willingness of people in the informal economy to join the formal economy therefore is likely to be influenced by the extent to which the government is committed to the provision of infrastructure and public services in the informal settlements from the taxes generated through this formalization.

## **5. INTERVENTIONS ON PROPERTY RIGHTS AND LAND MARKETS**

### **5.1 THE ALBANIAN LAND MARKET ACTION PLAN 1993**

In 1992 the Land Tenure Center (LTC) of the University of Wisconsin-Madison with financial support from the US Agency for International Development (USAID), undertook an assessment of the privatization of land program in Albania. That study resulted in the preparation of a Land Market Action Plan approved by Government in 1993, which received financial support from the European Community, USAID, the World Bank, and from the Government of Albania. The EC support focussed on the surveying and mapping of the privatized parcels through a direct agreement with the Project Management Unit (PMU). The World Bank through a contract with Terra Institute carried out legal and policy analyses of the emerging land markets. The USAID/UW Cooperative agreement provided support to the PMU for the registration of ownership and other interests in privatized properties, the operational needs of the PMU and its field teams, and the acquisition of equipment for the PMU central offices and field teams as well as for the Registration Offices. The Government of Albania's support came from budget support for the operations of the Registration Offices as well as for the rehabilitation of those offices from funds derived from the sale of food imports provided by USAID.

The formulation of the five-year Albanian Land Market Action Plan (LMAP) was initiated with the view of coordinating the investments to be made in developing land market institutions. The subsequent Cooperative Agreement between USAID and the University of Wisconsin was devised so as to provide support for the implementation of the LMAP. The LMAP had the objectives to:

- i) "Create a modern Immovable Property Registration System (IPRS) to record, display and protect private and public rights to immovable property
- ii) Rapidly record the newly created private property rights as well as public rights to real property in this system; and
- iii) Create policies and programs of land market support for:
  - a. the accurate valuation of real property
  - b. improving information about the supply and demand for land in the market
  - c. land use zoning to guide urban and rural development
  - d. the preservation of agricultural land
  - e. ensuring access to the land market by capital-poor families, and
  - f. the gradual liberalization of the land market"

(Coordinative Working Group for the Land Market Action Plan for Albania, cited in Mabbs-Zeno and Mehen 1998: 2)

A Coordinative Working Group (CWG) was further created under Decision No. 81 of February 1993, to guide the drafting of the LMAP and was chaired by the Chief Registrar. Once the Albanian Government's Council of Ministers approved the LMAP in 1993, they authorized the

establishment of the Project Management Unit (PMU) for the implementation and co-ordination of the projects devised under the Plan (Stanfield 2002: 2). Beginning in 1994 therefore, the Albanian Government as well as the European Union, the World Bank and the University of Wisconsin with USAID support, provided capital, technical, and financial assistance to the PMU for the implementation of the LMAP (LTC 1998).

Part of the LMAP and the first phase in the USAID and LTC Cooperative Agreement, was the creation of the Immovable Property Registration System (IPRS) for carrying out the initial registration activities necessary for the opening of the Registration Offices. An important part of the legal framework for this effort, deemed as necessary for stimulating and guiding the market to ease transactions, ensure the participation of different parts of the population and the use and protection of natural resources and was provided by the Immovable Property Registration Act, Law No. 7843 of July 1994 (Stanfield 1994: 2).

## **5.2 THE IMMOVABLE PROPERTY REGISTRATION ACT OF 1994**

The Immovable Property Registration Act is a procedural act, in that it incorporates legal definitions outlined in the Civil Code. The latter in turn is the substantive law on the ownership, leasing, mortgaging and other aspects regulating the legal rights and obligations related to immovable property (Stamo and Singer 1997: 2).

The Immovable Property Registration System (IPRS), described in the Immovable Property Registration Act, was chosen for four basic reasons: a) it protects the rights of immovable property owners by providing evidence about ownership and other interests; b) it is simple and inexpensive to administer and maintain; c) it provides the public with easily accessible information, facilitating the establishment of markets; and d) it permits the building of a Geographical Information System (GIS) with property information (Stamo and Singer 1997: 1). The IPRS is therefore a unique and comprehensive system in that not only does it map the physical characteristics of immovable property but it also records the legal interests in and rights to all land, urban and rural, public and private (Stanfield 1999: 10).

The Immovable Property Registration Act is separated into eleven sections, the most significant of which are summarized below.

- Part II: A Chief Registrar, appointed by the Council of Ministers of the Government of Albania, administers the IPRS nationally. The Council has also divided Albania into immovable property registration zones and administrative centers, each headed by a Registrar. The Registrar is responsible for the issuing of certification on ownership and transactions, maintenance of records on immovable property, suspending registration and requiring the production of property information from individuals. Each register, or *kartela* in Albanian, includes information on the location of property, its area or size, the name of the owner, whether there are any restrictions on the transfer of ownership and whether the owner has created a contract of lease for use of the property. Once there is a valid registration, every subsequent transaction transferring rights to property must also be registered.
- Part III: Each Registrar is responsible for keeping Registry Index Maps (RIMs) for his/her area of jurisdiction, outlining the boundaries and geographical location of properties as well as including a unique identification number for each property. The

RIM includes land to which people claim a right within a geographical zone called a 'Cadastral zone' (CZ). The Registrar can further authorize a survey of any property and change the RIM accordingly. The Registrar may also order the clear demarcation of boundaries and combine or sub-divide land parcels where requested.

- Part IV: The Act also makes provisions for the first registration of immovable property. Registration is affected by the presentation of documentation conferring ownership, and where this is not available, an application for registration can be made. Provisional registration is then publicly displayed for ninety days in a prominent and relevant place in the area where the property is located or through other appropriate means, for public examination. Once it is ensured in this way that there are no outstanding claims on a property, the registration process can proceed. The registrar is also responsible for settling land disputes or referring these to court.
- Part V: provides for the issuance of one certificate of ownership or lease by the Registrar for each immovable property, showing all the information in the register. This also allows for the public to examine the register or the Register Index Map.
- Part VI: deals with the registration of various interests in immovable property including ownership, leasing, mortgaging, co-ownership and in-use interests. Furthermore this also makes provisions for state-owned property, which are to be recorded in a separate register and noted on the Registry Index Map.
- Part VII: includes the registration of requirements of encumbrances such as servitudes, restrictive agreements and restrictions. Part VIII on rectification and compensation allows the Registrar to rectify the register and decide whether errors on the register result in a right of compensation. Finally, parts IX, X and XI deal with decisions of the Registrar and appeals, fees and offences and miscellaneous matters respectively (Stamo and Singer 1997).

### **5.3 THE SUBSEQUENT PHASES OF THE USAID / UNIVERSITY OF WISCONSIN CO-OPERATIVE AGREEMENT**

The five-year Co-operative Agreement (CA), mentioned above, between the LTC of the University of Wisconsin-Madison and USAID was carried out in three phases. The first phase involved the development of the LMAP and the creation of the IPRS, previously outlined. The objectives of the second phase subsequently were as follows:

- i) To create the Property Registration System (PRS) to record and protect private and public property rights to land
- ii) To create a model of the Property Registry Offices (PROs) in three districts, by June 1995
- iii) Develop policy options for the strengthening of property markets as well as using these to provide for more equitable access, productive land use, environmental protection and the preservation of agricultural land
- iv) Establish the conceptual and methodological framework for the assessment of the LMAP
- v) Train people in the design and implementation of institutional and technological measures for the establishment of land markets and policies (Stanfield 2002: 3).



Phase three of the CA in turn provided for the extension of phase two into the remaining 33 districts of the country, and further strengthening the PRS and land policy institutions as follows:

- i) Improve the institutional capabilities for maintaining the PRS in the long term
- ii) The establishment of the PRS in the remaining 33 districts, by December 1998
- iii) Develop policy options for further strengthening and guiding land markets
- iv) Train people for the creation and maintenance of the PRS, other land market institutions and policies
- v) Evaluate the effectiveness of the LMAP on achieving the Plan's objectives (Stanfield 2002: 3).

Progress was made from 1994 to 1996, with the implementation of the IPRS. However in 1997 civil instability coincided with the operationalization of the plan (Mabbs-Zeno and Mehen 1998: 2). This was caused by the failed pyramid investment schemes, which led to widespread destruction of property including some offices, equipment and records established under LMAP (UN-ECE-MOLA-Mission 1998: 5). As a result although first registration of immovable properties was meant to have been 75 percent completed by September, 1998, a figure of around only 30 percent was accomplished. In addition to this, only 65 percent of the District Registry Offices were operational and 30 percent of the properties had kartelas prepared (Mabbs-Zeno and Mehen 1998: 2).

A new phase of support for the LMAP followed after 1997, focusing on building institutional capacity and intensive analysis of the experiences to date. In 1998, USAID extended and revised its Cooperative Agreement with the University of Wisconsin, to account for the impact of the civil unrest as well as to evaluate progress to date on the implementation of LMAP and to seek recommendations for possible improvements. The revised LMAP extended the date of its completion by three years from September 1998 to the 31<sup>st</sup> of December 2001 (UN-ECE-MOLA-Mission 1998: 5). The goals of the extended LMAP included: a) the creation of a unified, cost-effective and accessible IPRS to record, display, update and legally protect private and public rights to immovable property and; b) developing policy options to support and guide land markets to induce more socially acceptable access to, productive and sustainable use of property (Gaynor and Bledsoe 2000: 1). One baseline study and four reports were commissioned to assess LMAP and were intended to provide inputs into the work plans of the LTC (Mabbs-Zeno and Mehen 1998: 2). These included:

1. The Land Tenure Center baseline survey carried out in 1995
2. Report by William Doebele of Harvard University:
3. UN / ECE Meeting of Officials on Land Administration (MOLA) Report:
4. USAID Assessment 1998 (Mabbs-Zeno and Mehan):
5. USAID Evaluation, 2000 (ARD)

6. A Land Tenure Center assessment of USAID's investments in land markets, 2002, subcontract under DAI in 2002.

Four of these six assessments are summarized in detail below and the findings relevant to the three key questions outlined in Section 1 are drawn out. The first and second assessments deal with questions of security and investments, however in so far as registration was incomplete or delayed due to problems in its implementation, the other assessments deal more with issues pertaining to the establishment of the IPRS, in particular recommendations on how to overcome problems that had emerged. The third and fifth assessment are not directly relevant for answering the first question in section one, furthermore they are specifically interested in the technical aspects of the registration system. For this reason the third and fifth assessments are only briefly reviewed here. The other assessments provide an indication of the process involved in the establishment of the IPRS, thus they are relevant to the second and third questions in section 1 on institutional investment and implementation approaches.

## **6. THE ASSESSMENTS OF DONOR ASSISTANCE IN PROPERTY RIGHTS AND LAND MARKET DEVELOPMENT**

### **6.1 THE LAND TENURE CENTER BASELINE STUDY, 1995**

A baseline study of the Albanian IPRS, conducted in 1995 by the Land Tenure Centre, was based on a questionnaire-based survey covering 792 rural residents holding over 3,000 parcels of land in five districts. In addition to the formal survey, case studies, secondary data and other sources were drawn upon. Questionnaires were designed to permit analysis on a parcel-by-parcel basis while at the same time making it possible to control for or link specific parcels to the household, holding and village-level factors.

“The IPRS baseline study was meant to provide a basis for gauging the ultimate impacts of land registration and associated measures and whether the hoped-for benefits were being realized” (Lemel et al. 2000a, pp. 4). The primary benefits of the Action Plan included, enhanced tenure security among property holders, certainly in property transactions, enhanced investment prospects and facilitation of an active property market.

At the time of the survey land registration was still incomplete, thus it was very difficult to link observed levels of tenure security to land registration by comparing registered and unregistered parcels. This was primary because final mapping and provision of titles *kartelas* was incomplete. Furthermore, many registry offices had not opened. One of the main hypotheses to be tested was that provision of *kartelas* would lead to investment and production benefits. As these has not been distributed a proxy had to be used to test this hypothesis. *Tapis*, the precursors of *kartelas* were used (for an explanation of the distinction between the two see Lemel et al. pp5).

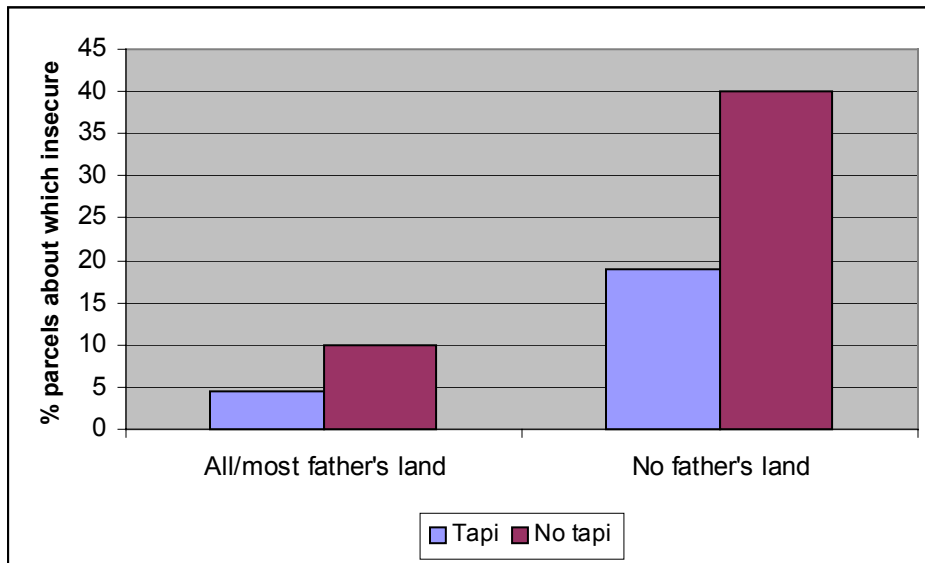
The survey was conducted in five districts – Lushnje, Tirana, Korce, Kukes and Gjirokaster – which encompassed the major agro-ecological and socio-cultural variations in Albania.

### 6.1.1 Findings

#### a) Tenure security

The most striking finding emerging from the base line survey related to the connections between formal security and subjective security. It was found that relatively few respondents cited lack of document (related to formal property ownership) as their reason for being insecure. In fact, at the aggregate level property documents contributed only marginally to security; respondents felt themselves to be secure on about 77 percent of parcels for which they possessed no documents. This was not much less than the corresponding figure of 84 percent for parcels that were documented. This general observation revealed nuances when location and history of ownership was considered. It was found that formal documents to land appeared to be a major contributor to tenure security in areas where land had no previous or identifiable owners and where it had been distributed in accordance with the law. However, this was not true for people whose pre-collectivization rights had largely been restored (that is, they occupied ancestral lands); “ownership documents appeared to contribute very little to people’s sense of security in such cases” (Lemel, 2000a, pp. 48). Figure 1 below illustrates this main finding from the survey.

Figure 1. Level of insecurity by ‘old owners’ and formal documentation



Source: Lemel et al.(2000a), pp. 41.

#### b) Investment behavior

In the survey unused parcels accounted for about 2 percent of all parcels and 3 percent of agricultural land area. Competing claims by ex-owners or others accounted for over quarter of no-longer used parcels. With regard to investment, it was found that the degree to which actual investment and perceived freedom to invest was highly correlated and almost confined to ‘father’s parcels’. “The tendency to restrict investment to ‘father’s land’ parcels has not just been

fear-driven: it also derives from the deep-seated mutual recognition and respect by fellow-villagers of old claims and the suspicion that the 1991 distribution could be annulled or reversed” (Lemel, 2000a, pp. 66).

The above findings from the survey, together with others, led to the conclusion that the prospects for investment and increased land use are likely to be minimally unless people’s sense of tenure security can be enhanced. Recommendations encouraged a speeding up of the land distribution program along with land adjudication initiatives and possibly land tribunals in areas of high conflict or where ancestral land claims were high.

While the baseline study was intended to be just that – a baseline for which changes could be compared against – unfortunately no follow-up study has yet been undertaken.

## **6.2 REPORT BY WILLIAM DOEBELE OF HARVARD UNIVERSITY, 1998**

The purposes of the Doebele report were to:

1. Analyze the institutions associated with the IPRS, which were essential for the creation of a dynamic and efficient land market in Albania
2. Review the types of rights and responsibilities created by privatization programs since 1991
3. Comment on the introduction of the concept of ‘sustainable land uses’.

The first two aspects form the body of the report and concentrate on the following institutions: a) the creation of adequate categories of ownership; b) the land registration system; c) an efficient land use control and planning system; d) institutions of credit for immovable properties transactions and; d) institutions to deal with the problems of illegal urbanization.

The following sections summarize the findings under each of these aspects, with the exception of the land registration system, which has been covered in greater detail in the MOLA report, summarized in the previous section.

### **6.2.1 Ownership security provided by the legal system**

As outlined in section 1, increased security of tenure through the legal system was expected to lead to more land market transactions, more secured credit and more investments. However the report focuses on complications in establishing tenure security through the IPRS, which in turn impacted on these expected outcomes. These were characterized by:

1. A potential compromise on the value of the housing, as although the Law on the Privatization of State Housing of 1992, secured private ownership it did not make provisions for the common maintenance of housing. This meant that owners had to create their own informal agreements with regards to common areas
2. Conflicting redistribution and restitution claims created through the Law on the Restitution and Compensation of Properties to Ex-owners of 1993, which created a pool of legal property rights that were not connected to parcels of land. This in turn caused an ‘overhanging’ of restitution claims on all the property owned by the state. These problems and outstanding claims sometimes lead to rights to tourist land being offered as a means of restitution.

The report further identified the following illegal subdivisions and occupation of state land:

- a) Illegal housing development in cities
- b) Illegal occupancy and building on park land in cities (e.g. Tirana)
- c) The illegal occupation and development of the Albania's potential tourist sites.

The first two issues are considered in greater detail in section 4.1 on informal settlements. The Doebele report however highlighted the intractability of these issues due to their highly politicized as well as the potential possession of arms to defend property. The report did however stress the importance of protecting economically valuable land with tourism potential, in which USAID it was suggested could play a role.

### **6.2.2 Investments in land**

The report found that at the time of writing, urban development in major cities was chaotic. The absence of land use controls on land with tourism potential further led to much of this land being illegally occupied and developed. This suggests, in a similar manner outlined in the case of the informal settlements, that in a context where there is an absence of a fully functioning legal system, investments in land are not necessarily exclusively associated with security of land tenure. The illegal nature of these activities further suggests transactions and investments in this land were benefiting individuals, but were not leading to broader development per se and furthermore, as this tended to be the best land, remaining land was less attractive for external tourism investments.

### **6.2.3 Institutions of credit for immovable properties transactions**

At the time of writing, the privatization of the public banking system was being undertaken, which prioritized assistance in the creation of banking functions other than mortgage lending. The report highlighted however that even if banks had capital, the legal and institutional framework in Albania was inhospitable to mortgage lending. This was due to the fact that the only collateral available for new housing was the ownership of existing housing. Banks therefore had to engage in legal actions to obtain a judicial determination of ownership. If this was successful then the property could be auctioned. However there tended to be few bidders, which forced banks to become landlords in the rental market.

This suggests that although land markets may be associated with economic growth through enhancing the ability of entrepreneurs to obtain mortgaged credit to finance investments (Stanfield and Bloch 2002: 5), evidence from this report suggests that an inhospitable legal and institutional framework may obstruct this process. Private banks at the time of writing therefore were providing credit for the commercial activities of their own nationals and donors.

### **6.2.4 Sustainable land use**

The sustainability of development is highlighted in the proposition in section 1. The Doebele report however highlights a different angle of sustainability, related to land use. The report

suggests that although sustainability may be threatened by recent trends in Albania to devolving control of pasture and forest land to communities, traditions of village elders and other customary rural institutions may be capable of handling these issues.

### **6.3. UN / ECE MEETING OF OFFICIALS ON LAND ADMINISTRATION (MOLA) REPORT<sup>5</sup>**

The MOLA report, resulting from research carried out between the 20<sup>th</sup> and 30<sup>th</sup> of June 1998, focused on the organizational, procedural, technical as well as financial aspects of the IPRS. The overall conclusion of the MOLA report was that: “all the aspects of an IPRS are well considered and tuned to each other” (UN-ECE-MOLA-Mission 1998: 52). However a number of concerns were also raised as well as recommendations on improvements regarding organizational and institutional aspects of the IPRS; legal and procedural issues; technical procedures and computerization issues; and costing concerns.

The report states that the total estimated project costs for first registration of all real property in Albania were US \$24 million, for an estimated 3 million parcels of properties. The unit costs were therefore US \$8 per parcel, which was the least costly registration done in Europe. It was recommended that taxation of physical objects or rights could be a form of revenue for the IPRS. The former could be on the market value of property, on the cost of investment in a property or on income from a physical object.

### **6.4 ASSESSMENT OF THE PROGRESS OF THE LAND MARKET ACTION PLAN IN ALBANIA<sup>6</sup>**

This report, based on research carried out between the 8<sup>th</sup> and 16<sup>th</sup> of June 1998, sought to examine the appropriateness of USAID assistance for institutional support of land markets in Albania and to assess whether there were any limitations to achieving complete first registration. Additionally, the report sought to determine what would be needed to ensure the accomplishment of the expected gains from functioning land markets (Mabbs-Zeno and Mehen 1998: 3). As in the case of the previous two reports, and the MOLA report in particular, this report focuses mostly on the establishment of tenure security through the IPRS and complications faced in this process rather than on evidence of how this has affected market dynamism and investment behavior.

The criteria of effectiveness, equity and sustainability are summarized below.

#### **6.4.1 Effectiveness: How effectively is the Land Market Action Plan progressing towards its objectives?**

The report notes that initial work in the design and development of first registration under the LMAP was reported to have been excellent. A major achievement identified for the development of land markets was the establishment of institutions for recording first registration and land

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<sup>5</sup> This section is principally based on the United Nations Economic Commission for Europe--Working Party on Land Administration (1998) *Technical Review of the Albanian Land Market Action Plan*, from the Meeting of Officials on Land Administration Mission, Tirana

<sup>6</sup> This section is based on Mabbs-Zeno, C. and Mehen, T. (1998) *Assessment of the Progress on the Land Market Action Plan in Albania*, USAID.

transactions. Furthermore the report notes that of the 3,046 cadastral zones (CZs), 17 percent were found to have completed registration, 60 percent were actively in the process of registering properties and in 52 percent surveying was complete, most of which had RIMs in June of 1998. Further there was greater registration of the productive agricultural areas and urban condominiums, as compared to the urban peripheries as well as the forested and mountainous areas where this was less. The economic significance and absence of disputes was attributed to the former speed and effectiveness in registration.

#### **6.4.2 Equity: How equitable is the expected outcome of the Land Market Action Plan?**

The report identifies three challenges for equitable resource use facing land markets in Albania, outlined below.

- a) Securing tenure rights for women: Privatization created considerable potential for the disenfranchisement of women, as land rights were vested in the names of men as the heads of households. Evidence indicated for instance that of 120 land sales in 1997 in Tirana, none were undertaken by women.
- b) Overcoming regional differences in land registration: Disparities in registration were identified between less valuable mountainous lands and more valuable arable lands. Similarly, registrations in regions with lower incomes were also found to be lower. These disparities were further aggravated by the smaller average plot sizes and prevalence of state ownership in these areas.
- c) Dispute resolution and avoidance: Land disputes should theoretically be directed to the judicial system, yet this was found to be ineffective due to delays, technical weaknesses as well as the potential for corruption in the system. It is argued that conflicts may be avoided in first registration through negotiations on competing claims, the participation of local actors or the recording of disputes as part of registration.

#### **6.4.3 Sustainability: How sustainable is the expected outcome of the Land Market Action Plan?**

Three areas were identified as important with regards to the sustainability of the LMAP, including:

- 1) Sustainability of funding through cost recovery;
- 2) Sustainability of leadership through merging the PMU into permanent operating units and;
- 3) Effective complementary land market institutions.

The report finally recommended that USAID should support a public information program on the IPRS and a technical assistance program for training registration staff. In addition to this it was suggested that USAID should review of the prospects for completing registration on pasture and forestry land, explore the options for providing assistance for institutional mechanisms to resolve land disputes and expand the methods for resolving key land market issues.

It was further recommended that the LTC should prepare a manual for managing first registration and the running of the Registry Offices, preparing additional policy studies that cover areas such

as conflict resolution, land use planning and enforcement, resolving the issues of restitution, and the need for land market credit services. Finally it was recommended that it should be determining what adjustments will be needed to register the immovable property in peri-urban areas.

## **6.5 AN EVALUATION OF THE ALBANIA LAND MARKET DEVELOPMENT COOPERATIVE AGREEMENT<sup>7</sup>**

A more recent assessment for USAID/Albania was undertaken in 2000. This assessment, carried out by ARD between the 22<sup>nd</sup> of October and the 8<sup>th</sup> of November 2000, sought to: a) evaluate the work completed under the Albanian Land Market Project Cooperative Agreement; b) evaluate the current capacity of the IPRS and other institutions responsible for registration and assess the long term sustainability of the IPRS; c) develop a transition plan for phasing out donor support to registration activities until December 2001, and the integration of critical functions and capabilities of the PMU into the IPRS; d) and outline the way forward for a land market development strategy (Gaynor and Bledsoe 2000: 1). The report is organized under the twelve operational objectives and outputs of the revised LMAP, including relevant outputs from the Cooperative Agreement (CA).

Of interest to this report, the report comments on the finding that land markets in urban and peri-urban areas were very active, a phenomenon covered in greater details in section 4.3, whereas the agricultural land market was less active. The report notes that this may have been due to a lower demand for agricultural land and the products from this, which may have been related to the high prices for local products and the fragmentation of land. It was therefore concluded that the drafting of land legislation and the implementation of the IPRS had helped in stimulating land market activities in Albania.

Aliko notes that although several difficulties have obstructed the completion of first registration on the IPRS and the creation of functioning land markets, “the claims of ex-owners regarding the restitution or compensation of agricultural land have caused the most serious impact” (2001: 12). This partly associated with delays in the registration process as a result of: the hesitation of ex-owners obtaining land through Law No. 7501 to register this due to a perception that the amount of land obtained too little or its location is undesirable; hesitation by new owners of land claimed by ex-owners, due to pressure from the latter; a failure to fulfill ex-owners claims for the restitution or compensation of agricultural land and; illegal occupation of land by ex-land owning families in certain northeastern districts of Albania (ibid. 2001: 12).

A survey of 952 farmers carried out in 2001 found that 80 per cent of the respondents cited the fact that part of the property was claimed by others as the main cause of uncertainty in land ownership (ibid. 2001: 13). 68 per cent of these respondents further were involved in land disputes with ex-owners. This re-iterates the finding of the Baseline study carried out in 1995, outlined in section 6.1 above, which suggested that perceived tenure insecurity amongst land owners was partly associated with whether their land had previous identifiable owners (Lemel 2000a). Aliko further argues that this uncertainty of ownership in turn meant that land owners

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<sup>7</sup> This section is based on Gaynor, R. M. and Bledsoe, D. J. (2000) ‘*An Evaluation of the Albania Land Market Development Cooperative Agreement*’, draft document submitted by ARD Consortium to USAID/Albania



were “not ready to sell or purchase agricultural land even if they have the possibility or need, thus seriously hampering the functioning of the land and real estate market” (2001: 13). The survey found for instance that 57 per cent of respondents felt buying land was difficult due to the uncertainty of ownership (ibid. 2001: 13). This echoes Lemel’s findings that people were less willing to invest in land outside their own ‘father’s land parcels’ due to a “respect by fellow-villagers of old claims” (2000a: 66). This differs however from the finding that investments and transactions in the informal settlements, rather than being hindered by tenure insecurity, may result from this (Aliko and Sherko 2002).

## **6.6 AN ASSESSMENT OF USAID’S INVESTMENTS IN LAND MARKETS AND PROPERTY RIGHTS IN ALBANIA: (LTC SUB-CONTRACT WITH DAI, 2002)**

The purpose of this assessment is to contribute to a study of the extent to which USAID’s programs to improve land markets and property rights have contributed to secure tenure and lower transactions costs in developing countries and countries in transition, thereby helping to achieve economic growth and sustainable development.

### **6.6.1 Main findings from documentary evidence**

- The outputs defined in the original C.A. were met and exceeded, and the quantitative targets for first registration and registration system development defined in the extended C.A. were exceeded in some aspects and nearly achieved in others. Three weaknesses were the small and ineffective public information and education efforts, and the suspicion of large numbers of inaccurate first registration records, and the management problems of the Registration Offices, especially in Tirana and surrounding regions. A fourth problem, the mismanagement of the PMU during the last 1.5 years, raises questions about the quality of the first registration work done during that period at least (Stanfield, 2002).
- Concerning the land market impacts and development effects, there is some evidence of a land market emerging for agricultural land, but the number of yearly transactions are low. There is very limited evidence about other development impacts in the available documentation, largely because of the termination of the project before the follow up field study could be done of the rural and urban beneficiaries of the project.
- The C.A. originally focussed on creating land market institutions, in particular the Immovable Property Registration System, but including also legislation dealing with land market transactions, public property ownership and administration, land protection, and local government land use administration strengthening. These themes were well developed. However, there was a weak effort at public education and information and only incipient progress on the issues of public access to the information generated by the project and managed by the Registrars.

## **6.7 OTHER INTERVENTIONS IN PROPERTY MARKETS**

### **6.7.1 Land Transaction Law: an example of mobilizing ‘voice’ for the disadvantaged**

Land transactions provisions within the 1998 Law *On the Transfer of Agricultural Land, Meadows and Pastures*(8318) reflect the outcome of a multi-year process facilitated by the Land

Policy Department of the PMU of the IPRS whereby NGOs, academics, donor agencies and rural women mobilized to voice their concerns about family land and property transactions. The concern was that a male head of household should not be able to alienate family members from their right to land through conducting a land transaction without the consent of all the family members. Without formalized procedures this was possible as the head of the household is the only name specified on the title deed and, furthermore somewhat arbitrary provision within the Civil Code state that *the farm family is represented in property relationships with a third party by the head, who is elected by the family members* (Article 224). Extensive dialogue and consultation with a large range of stakeholders, through interviews, forums, radio broadcasts and surveys, contributed to legal provisions within Law 8318 requiring that any act of transfer requires accompanying *documents that certify the composition of the family at the moment of transfer of ownership verified by the certificate of civil status and certified by the local government and a common declaration by family members* (Article 5). While some problems still exist around the definition of what constitutes the family at the moment of transfer, the process of dialogue leading up to Law 8318 was inclusive, empowering and consultative.

## **7. SUMMARY, CONCLUSIONS AND COMMENTS:**

### **7.1 SUMMARY OF ASSESSMENTS**

#### **7.1.1 Tenure security**

There were delays, complications or no first registration of properties in the IPRS where there was: a lack of documentation, ownership disputes, conflicting redistribution and restitution claims, illegal subdivisions or occupation of state land, illegal constructions or where transactions had taken place. Moreover first registration did not occur or was delayed in forest, pasture and waste land as well as mountainous areas, urban peripheries and poorer region, as compared to the relative success of registration in economically valuable land such as in the productive agricultural areas and urban condominiums.

In these cases therefore and for these types of land there was legal or formal tenure insecurity, and therefore may be expected to be characterized by lower market dynamism and fewer investments as per the proposition in section 1. This may in turn lead to inequalities in the economic development of these regions. This is problematic in terms of the proposition put forward in section 1 that ‘a key to sustainable rural development is legally secure entitlement to land *on the part of the disadvantaged.*’ De Soto further argues that when poorer people are blocked from participation in the formal economy, the potential for economic growth is stalled, impacting on the whole economy (2000, cited in Felstehausen 2002: 12). If the poorer areas as well as the more remote mountainous and peri-urban areas are taken to comprise of the economically ‘disadvantaged’ populations in Albania, and in so far as first registration, as suggested in the assessments, had not occurred or was delayed in these same areas, it would seem that tenure security on the part of the disadvantaged has not been realized and this in turn is likely to impact on development more broadly.

The 1995 Baseline Study found however that documentation was especially significant to tenure security where there were no land disputes and where land had been distributed in accordance with the law. However, formal documentation was less of a factor contributing to a sense of

tenure security for people whose pre-collectivization rights had largely been restored. A similar finding was observed in the urban and peri-urban areas of Tirana where factors influencing perceived tenure security included: the length of time a property has been used without the emergence of disputes or complex tenure statuses; neighbors in densely built up areas, where spill over into other properties or public spaces was more likely and; size of property as smaller properties were more likely to need extension into other properties (Lemel 2000b: 37).

### **7.1.2 Investment behavior**

The Baseline Study for rural areas further found that people were more willing to investment in their ‘fathers’ land parcels’, namely where they held a historical claim, out of fear and respect for old land claims. As mentioned above, these findings differ from the predominantly state-owned peri-urban areas, where investments in housing constructions often are as a result of perceived insecurity of tenure where land is illegally occupied (Aliko and Sherko 2002). The Doebele report further found that urban land occupation and development in major cities and on land with tourism potential was chaotic in the absence of land use controls. This suggests, that it is not only where there is an absence of a fully functioning legal system, but also where there are less likely to be ancestral or ex-owners claims and on land deemed to be economically valuable, or a combination of these factors that influence investment behavior.

Furthermore, in so far as in the 1995 baseline study revealed the hesitation to invest in land was due to a “mutual recognition and respect by *fellow-villagers* of old claims” (Lemel 2000a, my emphasis), suggests that community ties and in particular the recognition by members of the community of tenure rights, may be a determinant of investment behavior, regardless of legal factors such as tenure security. A similar finding was observed in urban areas where the weak enforcement of laws meant tenure security and investment behavior were mostly influenced by “conflicts or accommodations with neighbors, family members or ex-owners” (Lemel 2000b).

This suggests that investment behavior is not necessarily exclusively associated with legal security of land tenure, as implied in the proposition in section 1, but may also be associated with a number of other possibly inter-related factors. Other factors that may influence people to invest in land may include therefore where: there are no community ties with former land owners and no disputes over land ownership; new or extended buildings do not violate the rights of neighboring properties; the land is deemed economically valuable and; the occupiers are illegal and therefore feel their claims to land are insecure as a result. With regards to question 1 in section one therefore this suggests that on the one hand, a subjective sense of security of tenure is not exclusively linked with formal entitlements, and on the other, tenure security is not exclusively linked with land market transactions and investments.

### **7.1.3 Market dynamism**

The assessment in section 5.5 of 2000, found that land markets in urban and peri-urban areas were very active, whereas the agricultural land market was less active. The 2002 assessment in section 5.6 similarly found that there is some evidence of a land market emerging for agricultural land, but the number of yearly transactions are low. Given the findings outlined above however, namely that formal tenure security offered through the IPRS tended to be less for the peri-urban areas than for the agricultural areas, this appears to contradict the proposition that areas with

formal tenure security will be characterized by greater market dynamism. This suggests that market dynamism is not necessarily to be exclusively associated with tenure security.

In so far as the evidence presented suggests that transactions and investments in land in Albania have not been exclusively associated with tenure security in the formal economy, this implies that whereas these may be benefiting private individuals, they may not necessarily ensure benefits to the broader population through economic and social development, as proposed in section 1.

#### **7.1.4 Policy and institutional factors affecting the success of these activities**

The institutional factors affecting the success of tenure security, market dynamism and investments were primarily identified and assessed according to: efficiency in term so cost-effectiveness, effectiveness in terms of meeting objectives, speed and quantity of completed registrations and records as well as accurate and up-to-date recorded information; equity in terms of dispute resolution and; sustainability of institutions.

The most significant areas highlighted for improvements in these institutions included addressing the conflict between records and the reality on ground; public education and awareness raising on IPRS; generating links between the IPRS and public institutions; creating laws, regulations and guidelines to support the IPRS; improving the land use control and planning systems, particularly in tourist and urban areas; developing institutions for facilitating transactions and investments and; resolving ownership disputes.

## **7.2 LESSONS FROM ASSESSMENTS AND EVALUATIONS**

- The final USAID assessment report states that land markets in urban and peri-urban areas are very active, whereas the agricultural land markets are less active. This is much like the finding reported at beginning of paper from years earlier (section on evidence of land markets in Albania). It appears then, that the focus on rural properties has not been matched with an enhancement of markets in the urban areas.
- A number of the problems brought up in the later reports echo problems brought up in earlier reports, suggesting that earlier recommendations to resolve these issues have not been effectively implemented. For instance, one continuing problem has been how to capture the expertise assembled in the PMU and how to integrate this expertise into the IPRS so it can continue its work after the end of the project and the consolidation of the new Registration Offices with the *hipoteka* Offices.
- The recommendations seem to create parallel structures to the IPRS rather than seeking to strengthen the existing structures. This creates weak institutional ties with existing structures. e.g. although the original LMAP indicates that courts should ultimately deal with land disputes, as a result of continuing problems in dispute resolution the Mabbs-Zeno and Mehen report suggests the use of “non-judicial means” to overcome this. It is problematic as the legitimacy of any such parallel structures may be questionable in by-passing judicial institutions. Overlooking such issues may not make the IPRS politically or economically sustainable. This further highlights the point that the assessments emphasize economic issues, with less emphasis on judicial and political factors that also play a role in the

processes involved. This may highlight only part of the reality and may undermine efforts to create a suitable economic environment.

- The linkages between rural and urban land markets are not directly addressed in the assessments or evaluations. For instance, the uncontrolled expansion and building in urban areas means agricultural land is sometimes used for construction in peri-urban areas. Without addressing these linkages progress with land registration is likely to be slow. Recent studies conducted by the policy unit of the PMU of the IPRS have documented a range of emerging issues related to peri-urban areas and property rights/markets. These should be taken into account during field trip studies and further evaluations.
- While not the primary focus of the USAID/UW project, broader land related themes, such as land holding fragmentation and intra-family rights, need to be fully understood and taken into account within the IPRS. The project, specifically the land policy unit of the PMU has made substantial progress into understanding and detailing a range of policy issues related to land ownership. Furthermore it has successfully engaged with land owners and government officials, particularly around intra-family property rights concerns, to influence policy and legislation. This work should continue to be supported.

### **7.3 PROBLEMS WITH PRIVATIZATION PROGRAMS**

In any program with the ambition of the Albanian effort to shift to a market oriented economy in a short period of time, problems will emerge. In reference to the effort to create the basis for land markets to function properly, the first step was the privatization of land and real estate on a massive basis. Some of the problems which resulted from the ambitious effort of privatization are:

- About 4 million properties, both state and private, have emerged from the privatization process and from the private creation of new properties, formally and informal, since 1990. There are approximately 3.2 million rural parcels, including about 1.8 million parcels of highly fragmented agricultural land. There are about 800,000 urban and peri-urban properties, where the ownership status is of questionable legality. Rural parcel fragmentation and urban property legal problems make the surveying and First Registration process difficult and time intensive in the final phases of first registration.
- Agricultural land is mostly held in family ownership, but the definition of a family is imprecise in the Civil Code. Sale of family owned agricultural land is allowed for registered land, and according to the procedures established in law. However, there are differing interpretations of these required procedures, which leads to delays in transactions and high transaction costs.
- The ownership of apartments is acquired under Law 7652 and through a sale contract between the Housing Agency and all adult occupants who had rental contracts with the State as of 1 December 1992.<sup>8</sup> Occupants under 18 were not included as co-owners. There are no restrictions on the transfer of such properties, except in practical terms when all co-owners do not sign the transfer agreements, although most families yield to the head of family in such matters as tradition dictates.

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<sup>8</sup> Article 9, Article 20.

- In urban areas, numerous conflicts exist between possessors of properties and ex-owners. In some cases, the possessors have a privatization document from the National Privatization Agency or the municipality. In other cases, the possessors built illegal constructions before the land was formally restituted.
- Numerous errors or instances of imprecision have occurred in the privatization programs, often leading to overlapping claims from different owners for a single property.
- The existing cadastral institutions and *Ipoteka* have not been able to keep legal records on who owns what nor have they been able to correct the mistakes or inexactness done during the privatization and registration process.
- The reforms could not be technically well implemented, because of the difficult conditions of the state institutions at the beginning of 1990s, the velocity of the reform, the undedicated commitment of specialists, the low professional level of the privatization commissions, the communist mentality of officials for the reform implementation with orders without technical, material or monetary tools, entering of non-professional specialists to cadastral offices (such as: veterinarians, agronomists, economists and even electricians).
- Non-control and non-enforcement of sub-legal acts, which supported the Law no. 7501, 10 July 1991, “On Land,” the nonperformance of ex-parcel balance from the cadastre, and other deficiencies have made it possible that the land surface area recorded in documents of giving land in ownership and use was inconsistent to the real surface area taken by owners and users, etc.
- Private owners of land believe that they can use their properties however they wish. This belief is producing chaotic urban development that will require substantial investments to assure public health and desirable future growth.
- Land remaining in state ownership has often been treated as “un-owned,” leading to illegal occupation and the degradation of the natural resource base.

#### **7.4 CONCLUSIONS**

Despite these problems, the programs for the privatization of land and real estate did make significant changes in the structure of land and real estate ownership as shown in Table X in the annex.

- It appears that overall the IPRS has been successful in the first registration of a substantial portion of agricultural land parcels. As pointed out in the most recent assessment, the outputs defined in the original C.A. were met and exceeded, and the quantitative targets for first registration and registration system development defined in the extended C.A. were exceeded in some aspects and nearly achieved in others. However, the quality of the first registration work may have been compromised especially in 2000 and 2001, so the quantitative indicators may mask serious deficiencies in the identification of parcels and their ownership.
- Concerning the land market impacts and development effects, there is some evidence of a land market emerging for agricultural land, but the number of yearly transactions are low.
- There is very limited evidence about other development impacts in the available documentation. As stated in the 2002 assessment, this is largely because of the termination

of the U.W. project before the follow up field study could be done of the rural and urban beneficiaries of the project.

- It is unfortunate that no effort has been made to perform a follow-up study to the baseline study, conducted in 1995. This was a comprehensive study and the results were analyzed in detail and presented in various forums. Considering the effort and money that went into the initial survey a obvious next step would be to perform a follow-up which is similar in structure and sample to the initial one so that comparisons can be made and firm results related to the effects of the land registration system can be obtained.
- Felstehausen argues that the creation of institutional mechanisms for the provision of public services, an area as yet not adequately addressed in Albania, is significant so that the right to private property can lead beyond the accumulation of private wealth, to national development. In other words, for economic growth, resulting from land markets and property rights, to lead to development (Stanfield and Bloch 2002: 1) this must involve investments in public services. This point is particularly pertinent in the case of the informal settlements, where as Aliko and Sherko pointed out, investments in public services have to date been very poor. Aliko and Sherko stress the importance of completing the registration process for the ownership and transaction of all types of properties to ensure they are legal. This will ensure the regularization of informal settlements.

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## ANNEX 1. SELECTED INDICATORS FOR ALBANIA

Total population	3.4 million (2001 mid-year)
Population average annual growth rate	0.9 percent (1995 – 2001)
Urban population	43 (% of total population)
Life expectancy at birth	72 (years)
Illiteracy	15 (% population age 15+)

### GDP (US \$ billion)

1991	2000	2001
1.1	3.8	4.1

### Average annual growth in GDP

1981-91	1991-01	2000	2001	2001-05
-0.5	5.4	7.8	6.5	6.5

### Percentage of GDP

	1981	1991	2000	2001
Agriculture	32.4	39.3	35.9	34.2
Industry	43.0	42.7	22.7	23.4
Manufacturing		36.5	13.2	13.2
Services	24.6	18.0	41.4	42.4

### Average annual growth

	1981-91	1991-01	2000	2001
Agriculture	1.0	6.1	4.0	1.4
Industry	-0.5	5.0	11.4	10.7
Manufacturing	-	-0.8	5.0	6.5
Services	-3.0	5.1	13.3	13.6

## ANNEX 2. OWNERSHIP STATUS OF LAND (AND APARTMENTS) IN ALBANIA

Type of Land Holding	From Ministry Statistics			From Urban Land Study in Six Cities (1999)					
	Agricultural Land (ha)	Forests (ha)	Pastures (ha)	Urban Land with Buildings (ha)	Urban Land, Vacant, (ha)	Urban Land: Houses, Villas, (ha)	Urban Land: Commercial, (ha)	Total Urban Land (ha) (4)	Urban Apartments (no.)
<b>Privately Owned (1)</b>	562,473	6,314	18,595	3075.4	252.3	2163.2	669.9	3366.4	149,028
	80.4%	0.6%	4.5%	62.4%	21.9%	87.8%	46.5%	44.6%	94.6%
<b>State owned (2)</b>	136,949	1,043,500	393,000	1633.2	899.5	288.8	571.4	3982.0	8,521
	19.6%	99.4%	95.5%	33.1%	78.0%	11.7%	39.7%	52.7%	5.4%
<b>Mixed (3)</b>				219.4	0.7	11.6	198.8	205.0	
				4.5%	0.1%	0.5%	13.8%	2.7%	
<b>Total</b>	699,422	1,049,814	411,595	4928.0	1152.5	2463.6	1440.1	7553.4	157,549
	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Ministry statistics and the LTC/PMU studies of urban land.

(1) Privately owned land is defined as land which is held by an individual, a family or a legal person that can be transferred through sale, gift, mortgage, etc. to another owner.

(2) State-owned agricultural land includes agricultural land that villagers refused to accept in ownership or in use, agricultural lands which have been leased to private individuals for their use and agricultural land still held by other ministries and public entities. State-owned forest and pasture lands include lands given in usufruct, lease or other use rights to private individuals or groups who do not have the right to transfer these rights.

(3) Mixed ownership refers to joint venture businesses, part state and part private ownership.

(4) Total urban land includes a residual category of land such as streets, alleyways, parks and sidewalks that are generally state-owned.