

CONSOLIDATION OF THE ALBANIAN AGRICULTURAL LAND REFORM
THROUGH A PROGRAM FOR CREATING AN IMMOVABLE PROPERTY
REGISTRATION SYSTEM

by

David Stanfield*
and Agim Kukeli**

*Resident Advisor to the Albanian Land Market Action Plan; Land Tenure Center, University of Wisconsin, Madison, Wisconsin

** Specialist, Government Land Commission, Ministry of Agriculture and Food, Tirana, Albania

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Summary

The Albanian agricultural land privatization program begun in 1991 has resulted in the de facto distribution of nearly all of the agricultural land of the country to former members of cooperatives and workers on the ex-state farms. However, only about half of the land has been legally titled, and of the land titled, many of the present holders of the land feel insecure in their ownership because of lingering claims of the ex-owners of the land from prior to the collectivization of the land by the previous regime. Moreover, the distribution of the land was done by village land commissions which produced some discrepancies between the documentation of the new ownership and what in fact is owned. Finally, the privatization of agricultural land was not accompanied by explicit and clear legal definitions for the privatization of housing in the villages. The program for creating a new

System for the Registration of Immovable Property is providing some resolution to the problems which have emerged from the rapid and comprehensive privatization of agricultural land.

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1. Background

In this paper we discuss the privatization of immovable property (real estate) in Albania since 1991, and the attempts of the Immovable Property Registration System to clarify and record the new definitions of ownership produced by the privatization process in law and in practice. We focus specifically on the privatization of agricultural land.

One of the first steps in the conversion to a market oriented economy in Albania has been the transformation of state or social property to private property, the process of privatization.

The various privatization programs have had to define what private persons (physical or juridical) become the owners of what land and/or building which had been state owned land and buildings. In each program, the definition of owner suffers from some ambiguities, and the definition of the shape and location of the privatized immovable property have often been poorly defined. While inherently difficult, these efforts to define private property have suffered especially from the great pressures of time and public opinion to get the privatization programs moving. In Albania, there has been a great hunger for private ownership of land and other forms of real property, leaving to some later date the clarification of ambiguities in the definition of ownership rights and responsibilities. It is clearly the case, however, that unless a well functioning system for defining and defending private and public rights and responsibilities over immovable property is rapidly created to overcome these problems, the privatization investments will not have their intended effect of stimulating investments in a broad based and sustainable development of the country.

The privatization of real estate, or immovable property as the term is used in Albania, is being carried out through various programs:

- (1) The division and distribution of agricultural land formerly organized into cooperatives (enterprises which had been created since 1948 through the collectivization

of formerly privately owned farms) and state farms (enterprises created from the reclamation of land, usually not privately owned, as well as from land expropriated from private owners in which the state has made substantial investments). The former members of the cooperatives and former workers on the state farms have received the land subdivided and distributed by these programs. The legal basis for this effort is the Law "On Land" of July 19, 1991ⁱ, supported by various Council of Ministers and Ministry of Agriculture and Food (MOAF) decisions and orders. The MOAF is the coordinating agency for this effort.

(2) the sale of housing units in state constructed apartment buildings to adult residents, in a program launched in 1992ⁱⁱ, under the coordination of the Ministry of Construction and Territorial Adjustment.

(3) the restitution of property by the state to the owners prior to state acquisition, or to their heirs, under the coordination of the National Commission of Compensation and Restitutionⁱⁱⁱ;

(4) the privatization of enterprises (through Decisions of the Council of Ministers for the acceleration of privatization of small and medium enterprises^{iv}, and for the privatization of agricultural enterprises^v), under the coordination of the National Agency for Privatization;

(5) the sale of business sites in 1991-92 to individual owners, carried out by various municipalities;

(6) the leasing of land in tourism development zones, under the coordination of the Ministry in charge of tourism;

(7) the granting of studios as property to artist occupants, done by municipalities;

(8) the granting of year to year forestry harvest concessions to private companies for access to publicly owned forests, under the coordination of the General Directorate of Forestry and Pastures;

In this paper we will focus on the privatization of agricultural land and housing in village settlement areas, leaving to future analyses the other privatization programs.

2. Agricultural Land Distribution

The distribution of the approximately 420 collectivized ex-cooperatives' agricultural land (a total of 548,000 hectares prior to 1991 had been organized into cooperatives) to 383,600 rural households was done by Village Land Commissions. The law^{vi} established a per capita distribution scheme, but in about half of the villages, the local commissions opted for a return of the land to the ex-owners or their heirs (since collectivization had been carried out of formerly privately owned land during the period of 1952-1975).

The "Commission" approach to land distribution placed the responsibility for deciding who got what land in the hands of a commission of people from each village elected by the villagers. The members of these commissions had the responsibility for deciding who got what land, and were also part of the local community and recipients of land. The decisions which these Commissions made responded to a variety of personal, family, friendship and enmity relationships, as well as pressures from often powerful people in the community. Since the collectivization had occurred within the lifetimes of a large number of the adult members of the communities, those who had lived all of their lives in the villages could remember that their families had owned land, although they rarely had the documents to prove the location and size of the lands previously owned.

In some villages the pressures for following the egalitarian precepts of the law were strong, especially in those villages where the state had made large investments in land reclamation, or where a large number of residents were immigrants or where most of the families had little land prior to collectivization. In such villages, often the "principle of the arrow" was followed. The idea was that families who were eligible to receive land (i.e. had worked for the cooperatives and were not temporary residents) could be grouped into family groups, like feathers of an arrow. The Commissions then "aimed and shot" that arrow toward the lands which the ancestors of these families had owned prior to collectivization. Where the arrows fell, on lands previously owned by families of those seeking land, the lands were distributed among the families on the basis of family size.

In other Village Commissions, however, the predominant view was that the legal precepts for dividing the land per capita were not acceptable, and that the only "proper" thing for the Commissions to do was to validate the often de facto occupations of lands by those who claimed to be their legitimate owners from prior to the collectivization. This lack of acceptance of the laws prescriptions tended to occur

with greater frequency in mountain villages in the northern part of the country.

In some cases there were two distributions of the land in a given village, with the first effort done largely according to the law, but then later, when the village people heard about other villages distributing the land according to "old boundaries", a second distribution was made on that basis. Yet in other villages the distribution of the land was made according to the law for the most part, but adjustments were made some time later so that some families got more land than would have been justified from a strict reading of the law, perhaps because they had more relatives on the Commission or because their claims were viewed as just by the commission, or because they simply had sufficient authority or influence to take more land than their neighbors.

The force of beliefs about the sanctity of private property are very strong, so that in some villages people who were excluded from the land distribution process because their families had no claim to land from before collectivization often accepted their fate without complaint, since they believed they had no legitimate claim. There have been many such families who have left their villages in the search for land elsewhere, or in the search for employment in the cities, which have contributed to the rapid growth of some cities and to the persistent demands for land in other areas of the country.

Even where the distribution of the land was done largely according to the law's requirement for per capita allotments, the people who received land which had been previously owned by other families, have felt a tenuous claim to the land. They have feared that since the distribution was made according to a law passed by the Popular Assembly, any subsequent election which resulted in a change of the composition of the Assembly could result in the change in the law and a decision to return the land to the prior owners or their heirs. This fear has been reinforced by the return of urban properties to previous owners through other legislation.

For agricultural land, the law provides for the compensation of previous owners for the loss of their land during the previous regime, but not the return of their previously owned lands. The law also states that this compensation will be paid to the owners as of 1945, prior to the land reform of 1946. The estimate is that there were approximately 4,700 families which owned agricultural land in 1945. Assuming 4 heirs of these families would mean that in the interim years

approximately 20,000 families would now have a claim for this compensation.

This law has not been implemented, however, for a variety of reasons. There have been debates over the form of payment (vouchers which can be used for the purchase of other state owned assets which are being privatized, or parcels of land which is still state owned, such as on the coast or in the mountainous forests and pasture lands), the disputes over how to estimate the value of properties in 1945 whose records are only partially available and cannot be physically assessed, and the continued pressures from the families involved for the return of land and not the payment in vouchers which have limited perceived value.

Where the distribution of the agricultural land was done on the legally prescribed per capita basis, or nearly so, the District Land Commissions approved the issuance of ownership certificates to each family, listing the parcels which the family received, their areas as estimated from rudimentary measurements by the Village Land Commissions, the predominant use of the land in each parcel, and the names of the adjacent owners. The beneficiaries of this program received the land free of charge. Law 7501 states that the buying and selling of such land is prohibited, although subsequent legislation has permitted the renting out of such land.

The distribution of ex-state farm land (154,000 hectares had formerly been organized into state farms) has also been carried out, to approximately 106,000 families which worked on these farms, in a program initiated in November, 1992. Most of this land has been transferred to families through "in use" certificates, which grant the beneficiaries the right to use the land for an indefinite period without charge, while the state retains ownership. For the most part, the ex-state farms resulted from the state's incorporation of the land into agricultural use through drainage, irrigation and hillside terracing programs, as well as from substantial state investments in dairy and intensive vegetable production on lands near the larger cities.

Some state farm land had previously been organized into cooperatives, which had been "graduated" to state farm status. In such cases, the ex-cooperative land within the boundaries of the ex-state farms were distributed to families as "ownership", using the procedures used for the distribution of the other ex-cooperatives. In some districts, this procedure has not been followed, and all ex-state farm land has been distributed "in-use".

The "in-use" allotments present some problems in that the time period for use has not been defined, nor have the right and responsibilities of the users and the state as owner been clearly stated. Options are now being studied for the conversion of these allotments to explicit lease agreements or to outright ownership. This conversion is needed for providing greater security to the holders of the land and for assuring that the land will be used in a productive and environmentally sustainable manner.

The legislation which established the rules for these privatization efforts concerning agricultural land provided for the District Cadastral Offices (formerly the Offices charged with mapping the land uses of the cooperatives and state farms) to be responsible for recording any changes in the ownership or any mutations in the shapes of the privately held agricultural parcels following the distribution phase.

Figure 1 shows how the ex-cooperatives and ex-state farm lands have been privatized:

FIGURE 1: AGRICULTURAL LAND TENURE SCHEME AFTER DISTRIBUTION
FIGURE 1: AGRICULTURAL LAND TENURE SCHEME AFTER DISTRIBUTION
(FORMAL, LEGAL DEFINITION)

(I) On ex-agricultural cooperatives (collectives created from formally privately owned farms)
Under the land law No. 7501 date 19.07.1991

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_____The definitions of Administrative boundaries_____

— _____ —

Between districts (Government National Land Commission)	Within each District Land Commission in the district	Within village by the land commissions of villages
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— — —

_____PROPERTY_____

— _____ —

"In ownership" is given to agricultural cooperatives' families and residents in the village, according to their civil status on July 1 1991. Full quota /capita	Under the decisions no 256,etc.	"In use" for cooperative's non agricultural families, but resident in the village (for example a family resident in ex-agr. coop - who was a teacher or doctor). For this family is given 1/2 quota/capita, but not more than 4 dynym/family
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— — —

_____The calculation of the quota_____

— _____ —

(I) 3; 4/1; 4/2 - In use (or lease)

(II) 2 - in ownership

The most recent and complete data concerning the formal consolidation of the reform comes from the 15 January, 1995 report by the Statistics and Information Directorate of the Ministry of Agriculture and Food (MOAF), Table 1. Certain conclusions derive from this table:
om this table:

--Of the total agricultural land area, 81.2% has been made available for distribution to farm families.
--Of the total available for distribution, 96.2% has been distributed into either titled or de facto holdings by farm families. In only the District of Malsi e Madhe has less than 80% of the land available for distribution actually been distributed.

--The titled land represents 55.1% of the land available for distribution and 57.6% of the land actually distributed. The progress made in the ex-cooperatives in the issuance of titles is much greater than in the ex-state farms; 68% of the formers' lands are covered by titles in comparison with 20% of the latter. In the past 13 months (since 30 November, 1993), the progress with titling has been slow, with only 78,900 total hectares being titled, of which 47,929 titled hectares have been on the ex-cooperatives. At this rate, it will take another 3 years to complete the titling program.

--Once the titling program is completed, it is estimated that there will be approximately 106,300 families on the ex-state farm land, and 383,600 families on the ex-cooperative land, for a total of about 490,000 families titled.

--At the present rate of titling, by the end of 1995 there should be approximately 40,000 titled families on the ex-state farm land and 352,200 titled families on the ex-cooperative land, for a total of approximately 392,000 titled families. It should be noted that on the ex-state farm land, there is discussion of changing from the issuance of in use titles to the granting of outright ownership. Until this policy change is decided, there may be less progress in this sub-sector in the titling program.

The privatization of the agricultural land has resulted in a high degree of fragmentation of the formerly cooperative and state farm land. The new household holdings (numbering about 490,000) are fragmented into at least 1.9 million separate parcels of land, including an average of about 3.3

agricultural parcels for each family, which increases to 4 parcels per family, when the parcel is included which is used for the family house and garden^{vii}.

Looking toward the day when the buying and selling of agricultural land will be officially permitted, simply keeping track of who owns what land for such a large number of parcels is a daunting task. Moreover, the ownership certificates which have been issued contain information for multiple parcels but which are plagued by frequent substantial errors in the areas of the titled parcels as well as errors in the documentation of what land is owned. In such conditions there are substantial difficulties in documenting who owns what land. The form of the land allocation certificates (tapis) and the limited resources of the Cadastral Offices which under Law 7501 are assigned the responsibility of keeping the ownership records, have made this task extremely difficult. Over the coming years there is a high risk of tenure insecurity due to the lack of documentation of ownership. As the land market emerges, this situation can be a serious constraint to the long term development of the country.

3. Normalization of Legal Ownership through the Registration Program

The Law for the Registration of Immovable Property, approved by the Popular Assembly on July 13, 1994, attempts to resolve many of the problems remaining following the agricultural land distribution programs. The general objective of the registration effort is to establish a comprehensive system for recording rights to each parcel and apartment. Registers ("kartelas") are being created for each owned parcel and apartment, wherein the name of the owner(s) is noted, as well as the physical features of the property, its geographical location, any subsidiary rights (leases, easements, etc.), and any restrictions on the sale (mortgages, etc.) of the property. A unique number is assigned to each property on its kartela, which corresponds to the number identifying the property on a comprehensive registry index map of all properties in a cadastral zone (a "cadastral zone" is a village or section of a city).

The process is underway for registering the information from the ownership and in-use certificates on the kartelas and registry index maps. Due to the rapidity of the privatization process, it was inevitable that errors occurred in the calculation of the areas of the parcels as well as in the recording of ownership to parcels of land. Field teams are preparing parcel maps from the boundaries of parcels as they

have emerged in reality from the privatization decisions of Village and District Land Commissions, including in some cases decisions as to the allotments of land which have not been documented on the issued tapis. The field teams are also working with the Cadastral Offices, Land Commissions and with the holders of the land to complete the formal issuance of the tapis, where such tapis have not yet been issued and where there is sufficient legal basis for their issuance.

In the village of Lumth in Lushnja District, for example, field teams have completed the checking and updating of the tapi information. This work shows that 125 families became the owners of 469 parcels and 21 families are holders of in-use rights to 21 parcels. The roads, canals and other rights of way remain as publicly owned parcels. The state is also the owner of some parcels of land which have not been assigned to private owners or users, yielding a total of 60 parcels under state ownership in the village. There are a total of 550 parcels in this village of 125 families, occupying 236 hectares. Kartelas for each of these 550 parcels have been prepared. There are 2.6 hectares of house plots, on which are constructed buildings totaling 11,682 m². Registry Index Maps have been prepared showing these parcels, houses, roads and canals, on 7 map sheets, at a scale of 1:2,500.

The field checking and updating of the information contained in the officially approved ownership and in use tapis has documented a certain degree of discrepancy in the area of some parcels. In fact, in only 20 parcels was there no difference between the official estimate of areas as determined by the Village Land Commission and the re-measured areas. Table 2 shows the extent of these discrepancies.

The ideal situation would have been very little discrepancy between the official, title estimates of area, and the field verifications of these measurements. The land was to be distributed on a per capita basis, with the intention of providing for the relatively egalitarian distribution of the land. The land had to be measured to assure this equality of ownership. The Village Land Commission measured the land using bars two meters long or other simple procedures in order to reach this goal of egalitarian distribution.

However, in practice there are substantial differences in many cases between what the Village Land Commissions estimated for the area being distributed and what in fact people possess following the distribution process as determined by more precise re-measurements. The question is whether to consider these deviations as "mistakes" in the

tapis and register the measured areas, or to take the official statement of area as the definitive one and take land away from the approximately 58% of the parcels which are larger than officially designated, and add that area to the parcels which measure less than indicated on the certificates. This latter approach would create great turmoil in villages, while the former has no clear legal basis.

The field updating of the areas and ownership of the possessed parcels of land in the villages also uncovered another problem, having to do with the ownership of house plots within the village settlement area boundary (known as the "yellow line"). Law 7501 provided for the distribution of agricultural land to individual families. However, in the issuing of the legal tapis, for each family an area of land in one of the parcels which they received was denoted as containing their house plot. In some cases the parcels with house plots designated within them were placed on the borders of the village settlement area, so that part of the parcel was inside of the yellow line, and part was outside. However, for other families the Land Commission simply designated on the title the ownership of a house plot of the legally specified size without specifying in which parcel it was located, a common practice in those cases where the house plot was entirely within the yellow line. Yet in other cases people's house plots enclosed in fences within the yellow line exceed the legally allowed maximum, a limit which the government has established and which varies from zone to zone. In most of such cases there is no objection locally to these variations from the legal norms, and which in an indirect way the Land Commission has validated.

Since Law 7501 only dealt with the distribution of agricultural land, these decisions of the Land Commission which affect urban land (within the yellow line) but which are derived from procedures contained in Law 7501 do not have a strong legal basis. The question is on what basis can the ownership of these "urban" parcels be registered?

There are two procedures outlined in the Immovable Property Registration Act which are being used to resolve these questions. The first is for the Village Elders to work with the field surveying teams to prepare accurate maps of parcels within the yellow line, as well as an accompanying list of owners. This document is then signed by all of the owners listed, as well as the village elders and the Komuna Chairman, indicating their agreement with the information presented.

The second procedure is for the surveyed areas of parcels, the registry index map sheets and the kartelas to be prepared from available legal documents and from locally accepted physical possession of both urban and rural lands of villages. This information is displayed in a prominent place in each village for 90 days, so that all residents and anyone else who might be interested (such as zoning authorities who are interested in the size of house plots, and Land Distribution Commission members) can examine the measured areas and ownership information. If anyone is sufficiently convinced that the measured area or ownership information is incorrect, and can document that claim, the parcels in question are not registered until the dispute is resolved by the Village or District Councils, or by a relevant court. All other parcels are registered and the field gathered information along with the legal ownership records are entered into the official record of ownership of land in each village.

This process of creating the kartelas and registry index maps from the official records of the privatization process and through the verification and up-dating of these records by field registration teams is being conducted presently in 22 of the country's 36 districts. The work in the remaining 14 Districts will begin in the near future. There are 2,990 cadastral zones in these 36 Districts. As the updating of the records in each zone is completed, and the exhibition phase is finalized, the new Registration Offices begin registering all transactions, subdivisions, and consolidations of the land.

TABLE 1: PROGRESS IN THE PRIVATIZATION OF AGRICULTURAL LAND

TYPE OF LAND	Ex- State Farms-- Has.	Ex- Coops Has.	TOTAL Hectares	% of Total Area
Total Agricultural Land	154,083	547,922	702,005	100.0%
Undistributed, State Owned Land				
--Land of Low Quality	13,507	100,199	113,706	16.2
--State Retained	10,097	6,131	16,228	2.3
--Joint Ventures	1,808	0	1,808	0.3
Total State Owned	25,412	106,330	131,742	18.8
Available for Distribution	128,641	441,622	570,263	81.2
Distributed in Fact	119,649	425,958	545,607	77.7
In Process of Distribution	8,992	15,664	24,656	3.5
Titling process:				
--Number of Titles Issued	19,379	248,788	268,167	
--Area Covered by Titles	23,445	290,948	314,393	
--Distributed Land Area Not Yet Titled	96,204	135,010	231,214	
--Percent Titled	19.6	68.3	57.6	

Source: Statistics and Information Directorate, Ministry of Agriculture and Food, Tirana, 15/1/1995^{viii}.

TABLE 2: DIFFERENCE BETWEEN CERTIFICATE AND MEASURED ESTIMATES OF AREA OF TITLED PARCELS IN ONE VILLAGE (LUMTH)

<u>Discrepancy</u> <u>between Measured</u> <u>Area and Tapi Area</u>	<u>No. of Parcels Percent</u>	
More than 1000 m ² Discrepancy	53	15%
Between 200 m ² and 999 m ² Discrepancy	142	40.1%
Between 1 m ² and 199 m ² Discrepancy	139	39.3%
No Discrepancy	20	5.6%
Total No. of Parcels (available for analysis)	354	100.0%

Source: Preliminary field generated data by the Lushnja District Registration Team, 1994^{ix}.

ENDNOTES

- i Law "On Land", No. 7501, approved by the Popular Assembly on July 19, 1991.
- ii Law No. 7652, approved by the Popular Assembly on December 23, 1992.
- iii Law No. 7698, approved by the Popular Assembly on April 15, 1993.
- iv Decision of the Council of Ministers No. 248 of May 27, 1993.
- v Decision of the Council of Ministers No. 510 of October 26, 1993.
- vi Law "On Land", No. 7501, op. cit.
- vii Ministry of Agriculture and Food, Tirana, and the International Fertilizer Development Center, Muscle Shoals, Alabama. "Agricultural Production in Albania: Socioeconomic Survey 1993-1994", September, 1994.
- viii This Directorate periodically publishes statistics on the progress of the land distribution program.
- ix The Project Management Unit for the Immovable Property Registration System Action Plan is funding District land surveyors and registration specialists who measure the newly created agricultural parcels and record who owns them from available legal documents. These teams produce data which are entered into a data base from which these statistics in Table 2 have been tabulated.