

LAND MARKETS, INFORMATION, AND A PROPERTY REGISTRATION SYSTEM IN ALBANIA

by

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Summary

This article describes the creation of land markets in Albania within an overall strategy of converting from a centrally planned economy to a market based economy. The first major step is the privatization of rights to immovable property (land and dwelling units in particular). This process is well advanced, with some remaining problems: (1) the rights of family members to such property are ill-defined; (2) there are residual conflicts over the distributed ex-cooperative land; (3) buying and selling agricultural land is prohibited, but it is likely that informal transactions are occurring, leading to legal insecurities; (4) the recording of titles to immovable property is dispersed, being different for urban and agricultural properties; (5) condominium arrangements for urban apartment buildings are not in place; (6) land allocated to apartment buildings is not sufficient for access and owner use; (7) land invasions are common in urban areas; (8) legislation has not been consistent, creating overlapping rights to urban commercial properties and dwelling units. The effort to create a unified Property Registration System is urgently needed to overcome these problems and to move the country toward a socially and environmentally sustainable land market. Legislation and institutional arrangements for the PRS are in place, ready for the systematization of information about rights to real property.

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1. Background

The purpose of this article is to describe some of the Albanian experiences in the development of a Property Registration System (PRS) being created to document and protect rights to land and other immovable property as part of a strategy for creating dynamic as well as socially and environmentally sustainable real estate markets.

The conversion of an economic system even in a relatively small country like Albania (27,000 km square, and 3.2 million people) from being centrally planned to being market oriented is a challenge. Moving toward a market oriented economy means the construction of various types of markets, not just the retail market for the buying and selling of consumer and capital goods, which has been the major sources of market activities. Labor markets and capital markets are needed to provide for the movement of these components of the market oriented economy. Land markets are also important for providing access to land (real property) and for providing security of tenure once access is achieved in order to encourage productive investments and the protection of the environment. The land market involves the buying and selling, renting, inheriting and mortgaging of land and other real estate.

Markets are supposed to facilitate the movement of factors of production so that entrepreneurial opportunities can be exploited. However, unlike most products, labor and capital, land cannot be easily moved from one place to another. Exchanges of land are really exchanges of rights to land, and these rights have to be communicated to participants in transactions. Land markets are basically markets which deal in information about the rights to land. Land markets depend on a comprehensive and flexible information system for recording rights to real property, and yet able to inspire confidence in the accuracy of the information contained in the system. The information management technological transformations of the past decade provide opportunities for newly market oriented economies to leap past the older market economies in the construction of this information system.

2. Privatization of property

One of the first steps in the conversion to a market oriented economy has been the transformation of state or social property to private property, the process of privatization. The privatization of immovable property is being carried out in Albania through four programs: (1) the distribution of the ex-cooperative agricultural land to rural households according to the Law on Land of August, 1991; (2) the distribution of ex-state farm land approved in November, 1992; (3) the sale of business sites in 1991-92 and the sale of housing units in state constructed apartment buildings launched in 1993; and (4) the restitution of real property from state hands to the owners prior to state acquisition, or to their heirs.

2.1 Privatization of ex-cooperative agricultural land and house plots and ex-State Farm land

It is estimated that as of mid-1993, 383,069 households in Albania have gotten control over 470,086 hectares of ex-cooperative land. The new household holdings, however, are fragmented into at least 1.5 million separate parcels of land, including an average of about 3 agricultural parcels and one house plot for each family. Most of these allotments of land have been as household property, and only a small proportion (about 1%) as usufruct (for agricultural land of limited productivity, as a means for defining easements, and as a vehicle for providing housing for temporary residents in villages).

The privatization of ex-cooperative land was formalized with the passage of the Law on Land in 1991. In that law, land which had been organized into some 400 cooperatives (collectivized land which was owned prior to collectivization by mostly peasant farmers) was to be distributed among the families which were resident on the cooperatives at the time of the passage of the law. The law further required that the land be divided on a per capita basis, i.e., the number of people living in a particular village was determined, and each person received quotas of land of differing qualities. These quotas were then accumulated within a household for the total amount of land of different qualities which was to be assigned to the household. The Village Land Distribution Commissions were in charge of this process, and had the responsibility of dividing the land among the households, using this per capita procedure for deciding how much land corresponded to each household.

One major problem with the distribution program is that only in about half of the villages was this procedure was followed, and the District Land Distribution Commissions have approved the Village Commissions distribution plans and issued tapi, or certificates of allotments (patents or titles indicating private ownership of the land). This titling process followed an initial stage of subdividing the land, discussing the subdivisions with the households of the village, preparing the documentation of these allotments and getting the families in the village to agree. The documentation of the distribution to each family includes the name of the household head, the area of each parcel awarded, the main land use category of each parcel, and the names of the neighboring owners. A special form is filled out with this information (Form 6), and each household head is asked to sign this form, indicating his/her agreement with the allotment. This information is transferred to the titles which are issued to each household, with the name of the household head placed on the certificate of allotment or title.

In the other villages, the per capita procedure has not been followed, or has been sufficiently at variance with the stipulations of the law so that the District Commissions have not approved the de facto distributions of the land. In most of these cases, the pre-cooperative owners of the land or their descendants have claimed and occupied the land, leaving without land the families which have moved into the villages since collectivization and have no ancestral claims (see Lemel and Gandle, 1993). In these cases, only a few or no titles have been issued, even though the land has been subdivided and is being occupied and used by private families. Even where the distribution has been judged to be sufficiently in accordance with the law to authorize the distribution of the titles, some of the villagers have refused to receive them, claiming that the distribution was not in accordance with their desires for the return of their ancestral lands. The District Land Distribution Commissions continue to work with these problematic villages and villagers, hoping that once the procedures and funding for the compensation of ex-owners are in place, getting the

distributions more in accord with the law will be easier, thereby permitting the issuance and acceptance of the titles.

From data gathered in May and June of 1993 concerning the progress of the legalization of the distribution process, the estimate is that 45% of the families which have gotten land in the redistribution process have signed Form 6, indicating their agreement with the procedure and the land received. For only 62% of the recipients of land have events progressed sufficiently for Form 6 to be filled out by the Land Commissions. For practically all of the people who have signed Form 6 titles have been prepared. However only 31% of the recipients of the land have actually accepted the titles. Obviously there is a substantial challenge ahead for the government to sufficiently document the process of land distribution through the acceptance by the farmers of the legal titles, the basic source of information about property rights to agricultural land.

The program for distributing ex-state farm land is also well underway, expecting to allocate full ownership rights to 33,500 hectares (land which had evolved from ex-cooperatives) and usufructuary rights to 96,000 hectares (largely reclaimed or "new" agricultural land). It is expected that this distribution program will benefit 106,000 individuals, and will produce another 300,000 separate parcels of land.

The state farms were formed either from re-claimed public land or from cooperatives themselves from the collectivization of privately owned land. The distribution of the ex-state farm land which had previously been organized into cooperatives follows procedures similar to those used for the distribution of ex-cooperative land (per capita quotas, property titles to household heads, eligibility limited to those people resident as of August, 1991). For ex-state farm land which was previously owned by the state, most tapi's are given as "in-use" rather than as property, meaning that the state formally retains ownership of the land. The managers of the ex-state farms are also permitted to participate in the distribution process, and will be leased land. The other major difference is that the workers on the state farms' payrolls as of the date of the decision to re-distribute the land are eligible for an allotment "to satisfy their subsistence needs", which in practice means that some titles are being given to individuals (women and men) who are not necessarily household heads.

In both of these programs for the privatization of agricultural land, it is illegal for the recipients of the land to sell their rights, and rentals have been discouraged up until the approval in 1993 of Law 7715 which expressly permits the renting and leasing of agricultural land.

Clearly the intent of these two programs has been to divide up the ex-cooperative and ex-state farm land among all those who lived on the cooperatives and worked on the state farms, and to give the members of eligible households rights to the land, even though the procedures used ended up with only the head of the household named on the property and "in use" titles (except for some titles on some state farms). Each individual resident in these rural communities was to have an allotment based on the land/person ratio for each community. However, in order to provide some consolidation of the distributed land, the decision was made to accumulate the per capita rights to land within each household and assign the total of these allotments to the household, and to then locate physically where in the village lands each allotment was located. The title document issued to establish these land rights was issued in the name of the household head, even though every member of the household had a theoretical right to land.

In Albania, the household head is almost always the eldest man in the house. There are two main concerns with this arrangement, which derive from the fact that other members of the affected households, particularly women in a patriarchal society, who have legitimate rights to the land are not named on the titles:

- (1) if the individual named on the title, the male household head, decides to deal in the land (sell or rent or mortgage it), it may be legally possible to do so without notifying the other members of the family, thereby depriving them of the proceeds of the transaction as well as participation in the decision as to the wisdom of the deal.
- (2) if the individual named on the title leaves the household, e.g. migrates to another city or country, during his absence the other members of the household may not have the legal right to rent or mortgage the land or otherwise participate in the land market, thereby depriving them of the means for making the land produce income for them.

The extent to which custom and cultural traditions operate so as to avoid these possible difficulties is unknown, although the traditions have been woven around strong notions of patriarchal society (Gjeçov, 1989). Some more formal protection of the clearly intended rights of family members to the distributed lands will probably be needed.

The PRS, then, faces some serious information management and recording challenges: (1) It has to be able to incorporate allotments of agricultural land which have not been made in accordance with the law, and so that the holders of the land are not the beneficiaries of a legal title; (2) Due to the time which has already passed since the initial distributions of land, there will be some changes in ownership most of which have not been recorded at the District Cadastral Office; and (3) Some more formal means are needed to protect the rights of the all family members to land.

2.2 The Privatization of Urban Properties

Urban housing is another major area of privatization. Table 1 shows the overall situation of the ownership of dwelling units in 1989, prior to the privatization program. The vast majority of dwelling units in urban areas were publicly owned, five and six story buildings built by state construction enterprises. Some single family urban dwellings mostly predate World War II and are still in the possession of their pre-regime owners, although there are some 15,000 privately financed urban houses built since the War. In rural areas most housing has been built by their occupants, except for some multi-family housing projects carried out by state farms for their workers.

Table 1 about here

The privatization of these dwelling units is a relatively simple process of transferring ownership from the state to the occupants of the dwelling units (specified in Law 7652, On the Privatization of State Housing, 23 December, 1992). In the case of state constructed apartment buildings in urban areas, the households occupying them (mostly 1 and 2 bedroom apartments) can purchase the property at attractive prices. They must record on the privatization sale contract the names of all adult (over 18 years of age) household members as of August 1, 1992. In most cases, however,

only the household head signs the contract, as is the case in the privatization of agricultural land. The contract also contains a description of the location of the apartment and its size in square meters, and a plan of the apartment and of the neighborhood of the building in which it is located (showing the streets and the location of the building). The contract for urban housing privatization is signed by representatives of the Ministry of Construction and the household head, is notarized by the District Notary, and is then recorded in the District Hipoteca Office. It should be noted that the tapi for household plots on ex-cooperative land is signed by the District head of the Land Commission, and copies kept in the district cadastral offices. Thus, at the moment, the location of information about property rights is different for different types of land. This will change with the installation of the PRS which will create registration offices in each District containing all information about property rights to land.

In contrast to the agricultural land privatization programs, the privatized housing units have no legal restrictions on their sale or rental. However, since in many households, only the household head has signed the contract, concerns similar to those for agricultural land exist about how to protect the rights of the other household members.

Complications have also arisen concerning how to own and manage the common areas in the apartment buildings, and how to assure that there is sufficient land around the buildings to satisfy the needs of the occupants. A Condominium Act has been approved (No. 7683, 17 March, 1993), but largely ignored in the privatization of the apartments. The idea contained in that Act was for each privatization contract to describe the physical characteristics of the apartment, but also to include a statement of the proportion of the common property which was to be owned by the apartment owner(s). Unfortunately, the sale contracts issued to date have not included provisions for the ownership of the common areas.

Another major problem in the privatization of urban properties is the law's specification that only one meter of land around the outside edge of the building is to be attached as common property for the owners of the apartments inside the building. This restriction came about because of the unresolved issue of how much of the property of the ex-owners was to be returned to them. The problem is that the people inside the privatized buildings may have no secure access to the buildings, no areas for play areas for children, and no parking spaces.

From a land information system point of view, this restricted concept of condominium property which is probably not viable, will have to be modified in the future, and the vacant spaces among buildings allocated to some owner, or retained in the hands of a state agency whose mandate will include the administration of such lands.

Yet another problem in urban areas is the unregulated privatization of property, particularly land on which there are no buildings constructed. People are appropriating land and building houses, shops, apartment buildings, etc., challenging public officials whose responsibilities include the regulation of building, to stop them. This de facto privatization of land presents a special problem for a Property Registration System. Shall that system record the occupation of land and the construction of real property which in fact exists, or only that which is legally recognized? This question has yet to be resolved.

The urban real estate puzzle has been complicated by yet another difficulty revolving around retail shops. Immediately following the assumption of the new Stability Government, which governed

from May-December, 1991, the process of privatization of shops was begun in earnest. These shops were often on the first floor of larger buildings, and many had been closed for some time. The municipal or District officials authorized these sales, which by 1993 had reached as many as 40,000 (Standish, 1993). In April, 1993, however, the government adopted another policy relating to these shops in order to satisfy the demands of the ex-owners of the land or buildings in which they were located. A law authorized the ex-owners to become part owners in these privatized properties, without the agreement of the new owners. This action has created numerous conflicts, and is almost certainly inhibiting the process of investment in the retail trade. How should the ownership of these properties be recorded? Certainly the new owners, i.e., those who bought them in 1991 and 1992 from the state, would say that their interests should be recorded. The ex-owners would also argue on the grounds of justice and the April 1993 law, that their interests should also be recorded.

Despite the confusion around the meaning of condominium, the problems of illegal building, and the conflicts involving privatized shops, the privatization of urban dwellings and other units is well underway (almost 90% sales contracts signed by the end of 1993). The other major effort in urban areas, the restitution of property to their former owners, has also proceeded, although there is little information about the extent of that activity. The overall process of privatization of urban properties is expected to produce another 300,000 properties, including individual apartments, condominium buildings, and business places.

Table 2 summarizes the dimensions of the various privatization programs in Albania:

Table 2 about here

The privatized urban dwelling units have no restrictions on their transfer by the new owners. In the case of ex-cooperative agricultural land there are presently restrictions on the buying and selling of the new properties. The other main difference between the two types of titles is the adult members of the household are named on the privatization contract for urban housing, while only the household head is named on the titles for ex-cooperative lands.

For agricultural land, the fear of speculation and probably more importantly the residual conflicts between the present possessors of the land and the owners prior to collectivization have led to a prohibition of buying and selling of land which has been distributed by the agricultural land distribution program. In urban areas, particularly concerning the apartments which have been sold to their occupants, as well as concerning land in and around urban centers, the market appears to be quite active, even the buying and selling of these assets. But behind these emerging markets is a very weak institutional structure for their stabilization and for guiding them in socially and environmentally desirable ways to avoid the "robber baron" excesses and the environmental destructiveness of some past experiments in market oriented economies.

3. Progress to Date in Establishing the PRS

The Albanian Property Registration System and Land Market Action Plan (Approved by the Council of Ministers in October of 1993) envisions a number of projects to follow the land distribution programs in order to create dynamic and environmentally sustainable land markets.

One of the first steps envisioned in this Action Plan is the creation of a modern property registration system wherein information about who holds what right to what land will be recorded with that information organized by property (parcel, dwelling unit, etc), and not by deed. At the same time the Action Plan envisions the development of new and effective land policies and institutions under the radically new conditions of private ownership of real property.

One of the first steps in the development of the Action Plan was the creation of an inter-ministerial Coordination Working Group (CWG) composed of representatives of the five Ministries which are involved in the privatization of real property and are involved in the creation of the PRS: the Ministry of Agriculture and Food (for agricultural land and housing plots in villages); the Ministry of Construction (for the privatization of urban dwelling units and other urban properties); the Ministry of Justice (in charge of the drafting of the Civil Code, particularly the definitions of different types of rights to property, and the coordination of all new legislation); the Ministry of Finance (because of interest in a land tax); and the Ministry of Defense (responsible for maintaining the geodetic network and for the production of all topographic maps).

This CWG has met periodically to consider the major policy questions of the Action Plan, and to act as a channel of information back to the various Ministries.

3.1 The Legal Concepts of a Parcel Based Property Registration System

Getting the rules and concepts of the new economic and social order in place is a complicated exercise. Entire bodies of law have to be put in place for the functioning of the market economy. There are few Albanian specialists in the details of many legislative matters, particularly those dealing with economic matters, since the legally trained people have been oriented to the needs of the previous regime. At the same time, the structural transformations require immediate legislative responses. This situation encourages the passage of hastily prepared laws, or the importation of legislation (or consultants to draft such legislation) from other countries without adapting it sufficiently to Albanian conditions, or both.

The immediate task of the Action Plan has been the preparation of the legislative base for the land registration system. Given the lack of basic law defining the nature of rights to land (or immovable property), a working group was formed out of the CWG to draft the Immovable Property Registration Act.

The second part of the legislative strategy has been the iterative procedure of preparing a draft of the Registration Act, circulating it to various Ministries, collecting their observations and suggestions, redrafting of the Act, and final review by the working group. The first draft of the Act was prepared largely by an American consultant who drew on Registration Acts from a number of countries. The initial decision was made prior to the drafting of the Act to create a parcel or property based registration system, rather than a deeds based system. This decision was made on the basis of experience in other countries, and the recent published work on land registration and land information systems (United Nations; Larsson; Dale and McLaughlin).

This legislative strategy has produced results, but not without difficulties. The first problem has been to make the Registration Act fit into the emerging Civil Code, which has not been completed

or even finally drafted in its entirety. The drafters of the Code have with good reason been reluctant to circulate early drafts which they themselves were not agreed upon.

Despite difficulties and reverses, the development of basic legislation needed for the creation of the PRS is well advanced. The Immovable Property Registration Act is in its final draft. Basic agreement has been fashioned for the preparation of an Immovable Property Tribunal Act, which will create a quasi juridical mechanism for the resolution of conflicts over real estate, removing from the regular court system and from the offices of the various Ministers the glut of litigants seeking redress of their grievances. Substantial work has been done to develop basic landlord tenant legislation, particularly for valuable and productive ex-State Farm land to transform the "in use" titles into lease contracts, which will describe the obligations of both the landlord and the farmer tenants in a way which can facilitate the flow of credit to the tenants. Basic groundwork has been done concerning the needed Survey Act to describe the procedures which surveyors should follow in the preparation of survey plans. Preparations are being made to reach a national consensus concerning how the rights of family members to land allocated to heads of households can be protected.

Perhaps more important than the specification of these immediate needs is the provision for the development of future legislation and regulations which will guide the land markets so that this scarce resource will be sustainably used and will be accessible to all sectors of the population. Toward this end a program of land policy analysis and development is envisioned.

3.2 Survey and Mapping of Immovable Properties

One of the main components of the Action Plan, the strategy for creating the new registration system and the new institutions of the land market, is the preparation of comprehensive maps of all parcels of land (a parcel is defined as a bounded piece of land with a uniform tenure, where parcels can also be apartments or other sub-units of buildings which have separate tenure arrangements). These Parcel Index Maps are being created from the information generated by the privatization programs (agricultural land, urban housing units), as well as from existing map information about land held by the state in forests, pastures and other uses.

The strategy for producing these Parcel Index Maps is to use existing geographic information to produce a description of the location of privatized and publicly owned parcels for purposes of the operation of the registration system, and for providing the basis of a comprehensive land information system. Where existing geographic information is not adequate, new surveys and maps will be produced, either from new aerial photography or from field surveys, or both, with the possibility of using GPS technology where appropriate.

This initial "use what you have" strategy differs from that used in other countries, where the strategy has been to introduce the most advanced technology to produce the needed mapping, brand new and up to date. This latter strategy requires a heavy capital investment in technologies developed in other countries where wage rates are 100 times higher than in Albania and where the maintenance facilities for the technologies are relatively available. This strategy also requires a heavy front end investment in training of people in the management and maintenance of the new technologies, and the creation of a supply and maintenance service network. The step-by-step approach in Albania should result over the medium term in modern land information system

technologies being introduced and absorbed into evolving institutions. At the same time, this approach should also result in PRS being operational within a relatively short period of time, with a relatively modest financial investment.

3.3 Short Term Management and Long Term Institutional Development

One of the most difficult conceptual and institutional problems has been to devise a mechanism for the management of the different projects which are being developed under the Action Plan. It was decided early in the process, that the tendency to prefer a new agency for the management of projects had to be combined with the desirability of having the investments in management of land market oriented projects contribute to the future institutional needs of the country.

But defining what those future needs may be is not a simple task. The notion at this time is that Albania should have an organization which can provide a wide gamut of geographic information to the general public and which will be relatively isolated from political changes in government.

The latter question of relative independence is being solved by creating a non-profit Foundation for the management of the various projects which emerge from the Action Plan. The Foundation will have the responsibility of receiving funds from the international agencies and from the government for the implementation of the Action Plan.

The former issue of providing geographic information is still under discussion, but one possibility is for the Foundation to develop the following administrative and technical capabilities:

- (1) the administration of the Property Registration System, involving the coordination and quality control for the District Property Registration Offices and providing the technical backup for the maintenance of the Registry Parcel Index map.
- (2) the provision of the following geographic information services:
 - Geodetic Control Network Maintenance
 - Production of small scale mapping (1:25,000 and smaller)
 - Aerial photography for production of mapping
 - Soil type mapping
 - Production of periodic land use estimates
 - Creation and management of GIS
- (3) The conduct of periodic land policy analyses on priority issues facing the country.
- (4) Administration of supplemental services based on the above capabilities, such as the Immoveable Property Tribunal and Property Taxation.

Table 1: Number of Dwelling Units by Type of Ownership and by Type of Dwelling Unit

Type of Dwelling Units

Type of Ownership	Urban	Rural	Total
Public	202,225	36,475	238,700
Private	86,187	349,746	435,933
Total	288,412	386,221	674,633

Source: Albanian Census of 1989, unpublished tabulation

Table 2: Estimated Number of Family and Individual Rights to Real Property, Following Completion of Privatization Programs.

	Number of new owners* (%)	Number of new properties (%)
1. Ex-cooperative land	383,000 (48.6%)	1,900,000 (76%)
2. Ex-state farm land	106,000 (13.4%)	300,000 (12%)
3. Urban dwelling units and other properties	300,000 (38.0%)	300,000 (12%)
Total	789,000 (100%)	2,500,000 (100%)

*Households as well as individuals.

Source: Estimates of the authors.

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