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Working Party on Land Administration

WORKSHOP ON PUBLIC/ PRIVATE SECTOR RELATIONSHIPS IN THE ESTABLISHMENT OF  
LAND REGISTRATION SYSTEMS

Report prepared by the delegation of Albania in cooperation with the secretariat

Introduction

1. The workshop on public/private sector relationships in the establishment of land registration systems took place in Tirana from 30 March to 1 April 2000. It was organized by Albania's Immovable Property Registration System with the assistance of the United States Agency for International Development (USAID) and the European Union's PHARE programme in Albania.
2. Representatives of the following countries participated: Albania, Armenia, Austria, Canada, Czech Republic, Denmark, Finland, France, Georgia, Germany, Greece, Hungary, Latvia, Netherlands, Norway, Republic of Moldova, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, United Kingdom, United States. A representative of the ECE secretariat also took part.
3. The workshop was opened by Mr. A. DUBALI, the Chief Registrar of Albania. He reported on the implementation of the Albanian Land Market Plan.

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4. At the official opening, Mr. I. META, Prime Minister of Albania, stressed the key role that land administration played in establishing land markets and in the national economy as such. He expressed his gratitude to ECE and its Working Party on Land Administration for the activities carried out on land administration issues. He underlined the importance of the workshop for the development and setting-up of an effective land registration system in Albania. Reference was made to the link between real property and human rights.

5. Mr. H. SUMKA, Director, USAID, reported on land administration activities in Albania sponsored by USAID. He stressed the importance of effective land registration for successful transition, social stability, the promotion of an environment free of corruption, and democracy.

6. Ms. B. LIPEJ, Chairperson of the Working Party on Land Administration, and Mr. G. VINOGRADOV, Secretary, reported on the activities of the Working Party, with particular reference to land markets and security of tenure. The active participation of the delegation of Albania in these activities was stressed.

7. The following topics were discussed:

General introduction on the Albanian Land Market Action Plan

Chairperson: Mr. A. DUBALI (Albania); Presentations by Mr. N. VATA (Albania) and Mr. A. DUBALI. The session was followed by technical visits to the Central Office of Real Property and an urban development tour.

Topic I: Public/private sector relationship in the production of information for land registration

Chairperson: Mr. J. WOLTERS (Denmark); Presentations by Mr. S. LAMANI and Mr. P. HARASANI (Albania); Private sector response by Mr. L. BASHA (Albania).  
Chairpersons of the four discussion groups: Mr. J. WOLTERS; Ms. B. LIPEJ (Slovenia); Mr. P. van der MOLEN (Netherlands) and Mr. P. HARASANI.

Topic II: Role of the public and private sectors in the development of new technologies for land registration systems

Chairperson: Mr. H. ONSRUD (Norway); Presentation by Mr. E. LEKA (Albania); Private sector response by Mr. M. RACO (Albania).  
Chairpersons of the four discussion groups: Mr. G. MUGGENHUBER (Austria); Mr. J. BADEKAS (Greece); Mr. H. ONSRUD (Norway) and Mr. S. LAMANI.

Topic III: Access of public and private agencies to the information managed by land registration systems

Chairperson: Mr. J. MANTHORPE (United Kingdom); Presentation by Mr. D. STANFIELD (United States); Private sector response by Mr. A. DERVISHI (Albania).  
Chairpersons of the four discussion groups: Mr. J. VALIS (Slovakia); Mr. J. MANTHORPE  
Mr. F. de la PUENTE (Spain) and Mr. B. COMO (Albania).

## CONCLUSIONS AND RECOMMENDATIONS

### A. Topic I: Public/private sector relationship in the production of information for land registration

#### Institutional and legal reforms

8. The participants noted that it was important for the public sector to carry out institutional and legal reforms so as to become an effective buyer. The public sector should be a quality-conscious buyer. It has to specify what products and services it wants, and develop capacity to monitor quality and performance.

9. With a view to professional development, it is recommended that the private industry should establish professional associations, which should cooperate with other national and international organizations active in land administration.

#### Major types of contracts and tenders, quality control and reasonable profits for private companies

10. Basically, there are two types of contracts: contracts with fully specified agreements and "out-based" contracts. The "out-based" contracts are preferable. Pre-qualification, prototyping and continuous quality management are also important elements. In many cases, it may be preferable to use a largest number of smaller contracts instead of a few large ones.

11. The following elements are recommended to ensure quality control:

- Framework standardization: ISO 9001 and CEN 287;
- Precisely prepared technical specifications and well defined contracts;
- Control during the performance of works;
- Final checking of a product by the client (internal or outsourced) - automated and

manual methods;

- Competitive environment as a driving force;
- Elimination of mistakes by the contractor at his expense in a reasonable time;
- Insurance against damage to third parties caused by the performance of works.

12. To ensure reasonable profits for private companies:

- The market environment should be open to more competition and more tenders;
- The client has to be aware of the procedures and the estimated costs;
- Benchmarking is needed to comparable price levels either from domestic or foreign

sources;

- The State has to stimulate the private sector; and
- Associations of private professionals have to provide professional support, education and training, and ensure fairness, ethical and professional behaviour.

#### Professional licensing

13. The licensing of commercial companies as such does not seem to be necessary, as the

relationship between the one who contracts out and the contractor is of a private nature: the necessary requirements are set by the parties involved.

14. Some companies establish their own system of licences, which are to be issued by an umbrella organization. This is a self-regulating system which aims to provide evidence to the customer about the company's skills and capabilities. Another type of evidence of skills is ISO certification, which may be assigned by an independent auditor who audits the process description, its management and client satisfaction.

15. The licence of a professional (like a land surveyor) is of a different nature. On the one hand it may also be a proof of skills and capabilities, on the other, many countries, in addition, attribute to the licensee some legal competence (fixing legal boundaries, resolving land disputes, etc.). With licensing, the consumer is better protected, since licensing provides evidence of skills and reliability. Licences are issued by the State, or by a professional association empowered by the State to do so.

16. To protect the customer, the issuing of licences is recommended. The requirements and the legal status of the licence should be fully transparent. The licences should be issued only if the applicant meets specific requirements. Licences should not be for sale. Governments should be careful not to create private monopolies. Private companies should be exposed to market competition in order to sustain good and cheap services.

#### Competition between public institutions and private companies

17. Competition between the public and the private sector is undesirable and should be avoided as much as possible: competition should be fair, but in case of competition, fairness cannot be always guaranteed by the public sector. If there is competition, the government agencies should be audited or supervised.

18. The main task and responsibility of the public sector is to control the development of society and not to be engaged in operational activities. The capabilities of the public sector should be used to manage and control the activities of the public administration and to involve the private sector in operational activities as much as possible.

#### Role of the public agencies

19. For the private sector, the advantages of cooperation with the public sector are: more chances of receiving a return on investment; successful use of proven technological skills and equipment in other markets; better cost-effectiveness; more incentives for technological innovation because of competition; and more possibilities for establishing joint ventures with foreign companies.

20. For the public sector, the advantages of cooperation with the private sector are: contracting out to the private sector is normally cheaper; more flexibility in target-setting and in costs, an increase in the capacity necessary to achieve the aims; better awareness and

understanding of its own processes and products; and avoiding staff recruitment problems.

21. Some elements should be settled by the public sector: a legal framework that secures the relationship between the one who contracts out the contractor; the enforcement of these laws; independent audits; clear assignment of responsibilities and liabilities; and a sound quality assurance system. The tasks and responsibilities of the government in the field of ownership and map information depend on the related legal framework.

22. Matters with a legal character and impact should be assigned to the public domain only, and all technical matters should be in the private domain. An exception might be made for the independent professional (e.g. land surveyor) who is licensed by the State (or on behalf of the State by a professional association) to act on behalf of the government.

#### Views of the Albanian experts on the local situation

23. The production of information and related services should be decentralized. Some State activities should be transferred to private firms in districts (for example, digitalization, data entry and Kartela connections must be carried out in districts avoiding transport from the district to Tirana and vice versa). Contracts with private companies have many advantages; the State institutions are not competitive with their fixed prices and lack of flexibility in meeting specific interests and needs.

24. Quality control could become more effective by strengthening the cooperation between the registrars and coordinators in districts. The control group at the Project Management Unit (PMU) should be strengthened and consideration should be given to setting up an independent inspectorate.

25. There is a need for more awareness about the registration system in districts, more staff in the Registration office and institutionalization of the relationship with the other institutions through governmental decisions and laws, in view of existing difficulties in gathering real property documents.

#### B. Topic II: Role of the public and private sectors in the development of new technologies for land registration systems

26. The Albanian authorities have used a low-tech approach in building their land registration system, e.g. both maps and alphanumerical registers are initially established in paper formats. It seems to have been a successful approach.

27. At the same time, the use of modern computers, databases, geographical information systems (GIS) and surveying techniques is gradually introduced in the public registration offices, this step-by-step approach has proved to be very positive.

28. Private surveying companies have developed very rapidly in Albania, currently providing services based on modern technology like geographical positioning systems (GPS) and digital

mapping techniques. This development was initially facilitated by the provision of modern equipment by the Government on favourable conditions.

29. In terms of geodetic accuracy, Albania has decided to establish an index map using different surveying and mapping techniques, not requiring maximum geodetic accuracy. This practice facilitates the establishment of the land market in Albania.
30. Different countries have different traditions concerning the standards for geodetic accuracy in cadastral surveying and mapping, but this has no significant impact on the operation of the land market. Complete and up-to-date information seems more important than geodetic accuracy.
31. In building their first registers, several countries in transition had to rethink their approach to detailed field surveying, and eventually turned to index maps based on photogrammetry and other less expensive methods. Precise field surveying of all corner points would increase the costs considerably, compared with less accurate index maps.
32. Whilst the emerging land market is well serviced by index maps, the issue of quality of the legal information is much more critical. It is vital that the market should be able to fully rely on the information concerning ownership and other legal rights in land, and that deficiencies in this area should be backed by a State guarantee.
33. Digital photogrammetry, in particular orthophoto, GPS and even satellite images have been successfully used for cadastral works. However, countries in transition should concentrate on applying appropriate technologies, which may not always be the most advanced. Governments should concentrate their efforts on laying down standards for data quality, formats, etc., but without specifying the methods or instruments to be used.
34. In developing national standards for surveying, governments should assume that cost-effective methods and technologies are applied, such as photogrammetry, orthophoto and GPS for boundary surveys
35. National standards should be developed in close cooperation with the private and public sectors.
- C. Topic III: Access of public and private agencies to information managed by land registration systems
36. The collection of information has one major justification: it should facilitate the decision-making process for citizens, for businesses and for the government. The central issue is how accessible should land registration and cadastral information be? Should there be unrestricted access to all information or should it be limited to particular enquiries?

### Open or restricted access to land information

37. According to a recent study carried out in 36 ECE member States, in 72 per cent of all jurisdictions complete access to the land register (kartela) or land cadaster is allowed on payment of a fee. Only 6 per cent of all jurisdictions indicated that partial access is allowed, and in other jurisdictions access was usually permitted only with the permission of the owner of the property or the registrar. The general view is that open access is desirable.

38. One option is that only the owner and persons authorized by the owner should have access to the information relating to the registered property. This approach rests on the view that these are private matters resulting from a private contract and should be of no concern to anyone else. The State should respect this privacy with only rare statutory exceptions, for instance where matters related to national security or law enforcement arise.

39. Another approach takes the view that information about land should be open to all. In a transparent market everyone is able to get information about ownership of land and all related facts. This option reflects the principle that land is for the benefit of all and, whilst private landownership is to be encouraged, it is the community as a whole which is the collective custodian of the land. Transparency discourages fraud and helps the land market.

40. Between these extremes there are many variants on privacy or openness. For instance, a land register might be open only to a specified group of enquirers, such as authorized public officials, law enforcers or lawyers. Another option is that only parts of the land register may be open to all. In some jurisdictions, for instance, information on the price paid for a property might be regarded as private, whereas in others it is available to the public.

41. Experience has shown that in those countries where information is openly available no difficulties or problems arise as a result. Information about ownership, other land rights, price and valuation is generally accepted as public information. But in those countries where traditionally land information has not been public, there is real concern about making changes in the direction of more openness, which is inevitable and understandable.

42. In most countries access to land information is restricted to land and property and excludes enquiries about the land owned by a particular person. Although some countries have total access, it is recognized that personal privacy could be compromised if access to information about citizens is permitted.

43. Those countries where access to land information is limited should study the existing arrangements in countries where access is open to all so as to review their internal arrangements. Governments should pay attention to personal data protection and European legislation on that matter.

### Pricing of land information

44. There should be a fixed fee for particular land information request reflecting its actual cost. The same fee should apply to all requests irrespective of whether they come from citizens, businesses or public bodies. Differentiated fees may apply depending on the type of land information request to be provided (e.g. verbal information, inspection of documents, photocopies of documents, electronic on-line access, etc.). In countries where systems are being developed, fees should be kept as low as possible to encourage wider participation in the land market. In countries where the government is currently investing substantially in building a land registration and cadastral system it is not reasonable to impose cost-recovery fees. In countries where electronic access systems are developed, fees can be reduced because of the lower production costs.

### Public private partnerships

45. Within the requirements of the law, the land registry and cadastral organizations should seek partnerships with the private sector to facilitate accurate, speedy and inexpensive access to land information. Where land register information is computerized, there is more scope to involve the private sector and to improve information services.

46. As a general rule, the addition of new or amended information to a land register, for instance relating to new owners, should be made by the responsible public organization. But the management of a computerized database, the establishment of networks and the marketing of land information to meet the needs of users can be contracted out to the private sector. It is important that the public sector has the expertise to manage and monitor contracts with the private sector.

### Geographic information structure

47. In a number of countries the need to coordinate activities related to geographic information is recognized. This is encouraged by government but the main initiatives to coordinate developments is generally taken by professional and international specialists and technical bodies.

48. The government, through an appropriate body, should act as the promoter of such coordination. It should ensure that the interactions across public bodies and professional institutions at national and regional level avoid duplication and that the country adopts compatible and approved international standards. This is particularly important, for instance, to ensure that property referencing systems are unique and future cross-border access to land information possible.

### Sharing information

49. The importance of sharing information, as well as the need to avoid duplication of record keeping, is recognized.

50. The organizations that keep land records should examine possibilities for improving their operations by sharing information and coordinating the land information services they provide to users. The objective should be to reduce costs and to improve services to the public so that users can get access to all publicly available land information from a single place of enquiry.

51. To achieve these aims, countries should establish a national coordination board with representatives from all organizations holding public land information.

#### Customer orientation

52. The authorities responsible for developing public services should be aware of the customers' needs and expectations. Within the requirements of the law, the social and economic life of the community will benefit from efficient and responsive services. Customer surveys and regular scrutiny of service standards will contribute to this awareness.

53. Those responsible for land registration and cadastral services should put in place a management structure to provide such customer information and to develop and public customer service performance targets.

#### Misconduct of public officers

54. It is vital to eradicate any misconduct by public officers in the performance of their duties. The confidence of the citizens in the land registration and cadastral system depends on this.

55. Rigorous control systems should be established to ensure that no such misconduct takes place but, if perpetrated, is quickly, discovered and dealt with. New staff should undergo thorough scrutiny before recruitment. In the financial sphere, the control of fees and expenditure should be separated. An independently managed audit function is recommended so that visible and prompt action can be taken to deal with any misconduct. Regular monitoring of actual management performance is also important to ensure that the highest standards of conduct are maintained.

#### Copyright and privacy laws

56. The participants recognized the complexity of the issues relating to copyright and privacy. These issues are particularly challenging as the importance of intellectual property is on the rise and the value of land information increases. The Workshop endorsed the view that international bodies should continue to seek actively international agreement to establish worldwide standards, protocols and guidance for copyright and privacy laws related to land information.