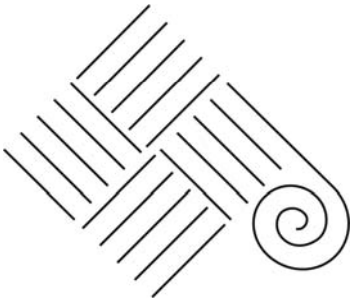
An Assessment of Property Rights in Kosovo



Final Report

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Broadening Access and Strengthening Input Market Systems (BASIS) IQC

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All opinions and errors contained in this report are those of the members of the assessment team, and do not represent the views of the US Government or ARD, Inc.

Kosovo Map

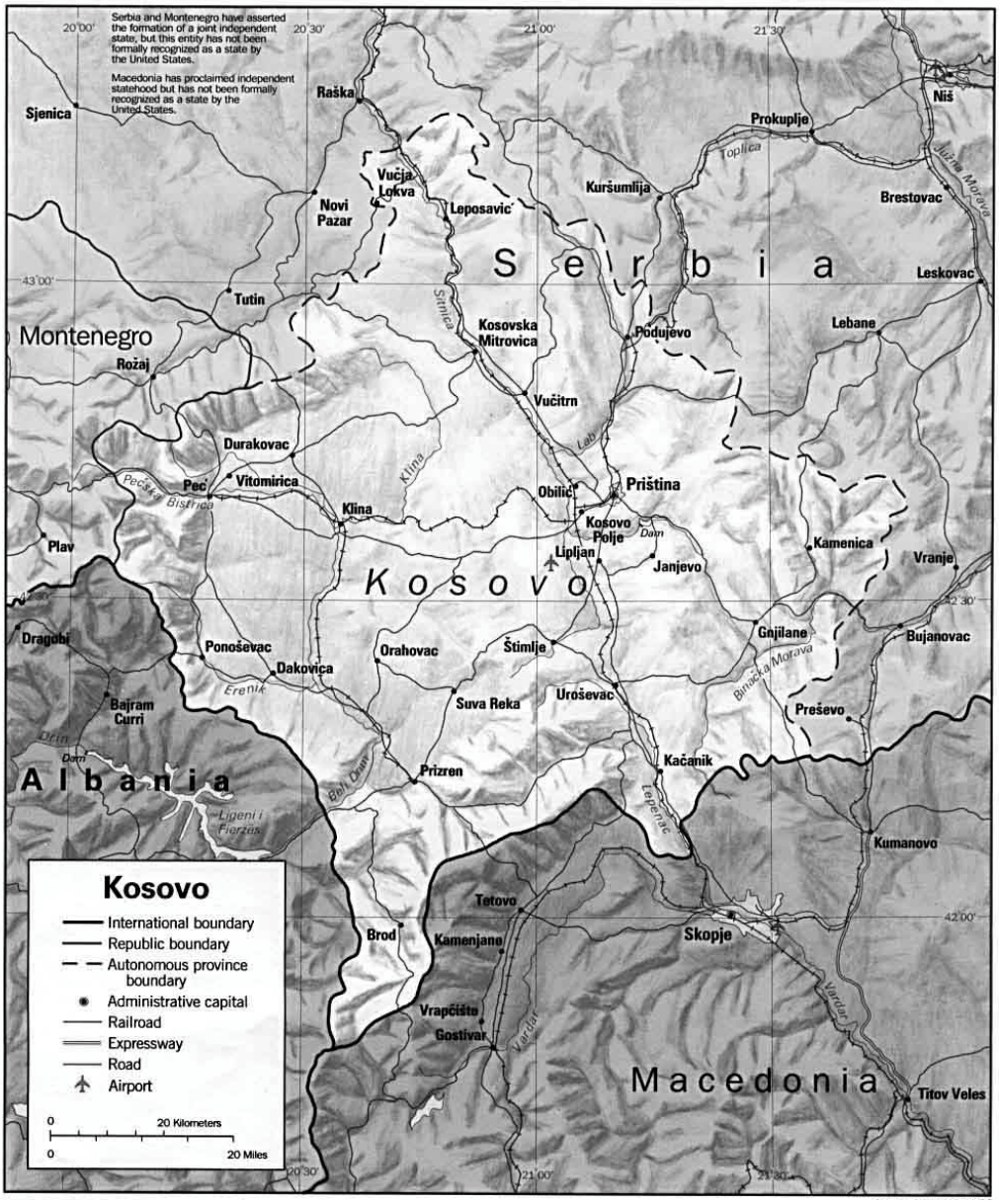
Serbia and Montenegro have asserted the formation of a joint independent state, but this entity has not been formally recognized as a state by the United States.
Macedonia has proclaimed independent statehood but has not been formally recognized as a state by the United States.
Sjenica
Raška
Niš
Prokuplje
Toplica
Južna Morava
Vučja Lokva
Novi Pazar
Leposavic
Kuršumlija
Brestovac
S e r b i a
Leskovac
Tutin
Montenegro
Rožaj
Ibar
Kosovska Mitrovica
Podujevo
Lebane
Vučitrn
Lab
Durakovac
Klina
Peć
Vitomirica
Pećka Bistrica
Obilić
Priština
Kosovo Polje
Drim
Plav
Lipljan
Janjevo
Kamenica
Vranje
K O S O V O
Gnjilane
Bujanovac
Dragobi
Ponoševac
Orahovac
Štimlje
Dakovica
Binačka Morava
Erenik
Suva Reka
Uroševac
Bajram Curri
Prevševo
Drin
Kačanik
A l b a n i a
Prizren
Beli Drim
Lepenac
Ligeni i Fierzas
Kumanovo
Kosovo
International boundary
Republic boundary
Autonomous province boundary
Administrative capital
Railroad
Expressway
Road
Airport
0
20 Kilometers
0
20 Miles
Tetovo
Brod
Kamenjane
Skopje
Vardar
Vrapčište
Gostivar
Macedonia
Titov Veles
20°00'
20°30'
21°00'
21°30'
43°00'
42°30'
42°00'

Table of Contents

Tables and Figures

Acronyms and Abbreviations

ABK	American Bank of Kosovo
ABU	Agro-Business Unit (European Agency for Reconstruction)
BPK	Banking and Payments Authority of Kosovo
BRK	New Bank for Kosovo
BVI	*Bashkesia Veteqeverisese e Interesit* (Self-governing Community of Interests)
€	Euro (€0.79 per US$1 in February 2004)
EAR	European Agency for Reconstruction
EU	European Union
FMO	Netherlands Finance Company for Developing Countries
GDP	Gross Domestic Product
GTZ	*Deutsche Gesellschaft für Technische Zusammenarbeit*
ha	Hectares
HPCC	Housing and Property Claims Commission
HPD	Housing and Property Directorate
IPRR	Immovable Property Rights Registration
KCA	Kosovo Cadastral Agency
KGB	Kosovo General Budget
KCIS	Kosovo Credit Information System
KCSP	Kosovo Cadastral Support Program
KTA	Kosovo Trust Agency
m	Meters
MAFRD[1]	Ministry of Agriculture, Forestry, and Rural Development
MCO	Municipal Cadastral Office
MEB	Micro-Enterprise Bank
MESP	Ministry of Environment and Spatial Planning
NGO	Nongovernmental Organization
OSCE	Organization for Security and Cooperation in Europe
PISG	Provisional Institutions of Self-Government
SAPK	Socialist Autonomous Province of Kosovo
SFRY	Social Federal Republic of Yugoslavia
SME	Small and Medium Enterprise
SOE	Socially Owned Enterprise
SRSG	Special Representative of the Secretary-General
UN	United Nations
UNMIK	United Nations Interim Administration Mission in Kosovo
USAID	United States Agency for International Development

[1] MAFRD changed from the Department of Agriculture, Forestry, and Rural Development in February 2002.

Executive Summary

The purpose of this report is to assess how property rights are currently influencing conflict, investment, agriculture, and municipal governance in Kosovo. The report also identifies possible areas where USAID/Kosovo might provide technical assistance to draft laws, strengthen institutions, and/or resolve conflicts which will enhance household property security and business investment, improve economic growth, and lead to more effective local governance. See Appendix A for the scope of work for this assessment report.

The legally valid documentation of rights to land and buildings has been severely weakened by the conflicts of the past decades in and around Kosovo. The violence of war caused the destruction of public records about public and private rights to land and buildings, including the cadastral and court records and the archives of the enterprises that managed socially owned apartments and other assets. Property maps, cadastral books, possession lists, and transaction document archives, which comprise of the "authoritative" identification about who has what rights to what land and buildings, have been removed to Serbia. In addition, people avoided the formal transaction recording system and carried out transactions informally for several decades due to transaction taxes and the legal prohibition of transactions between Serbs and Albanians.

In some areas of Kosovo in 2000, the official records of privately held land rights corresponded to the actual possession and claims to land in only 30% of the cases. Even after the substantial efforts made in the Kosovo Cadastral Support Program (KCSP) to reconstruct the official records, the situation is still not acceptable. Boundaries of properties and the identification of the names of possessors of properties as of 2003 based on legally acceptable documents correspond to actual boundaries and names of possessors in about 50% of the cases.

Claims have been filed at the Housing and Property Directorate (HPD) for about 29,000 abandoned or illegally occupied housing units (50% rural, 50% urban) by the holders of legal rights to these residential units. About 42% of these claims were resolved in the six months following 1 July 2003. The resolution of these claims significantly contributes to social peace, but these cases represent less than 8% of the housing units of Kosovo. Many of the remaining housing units lack legally valid documentation of property rights and boundaries.

What are the consequences of this situation?

- As the availability of mortgaged loan funds increases and the number of loan applicants increases, there will be increasing difficulties with using immovable properties as security, due in large part to ambiguities in the property possessors' registered information.
- Banks are experiencing constraints on their lending, fearing the inability to realize their security interests in immovable properties. This is due to uncertainties about property rights and to volatility in immovable property markets, particularly with regard to agricultural land.
- Formal immovable property markets also appear to be stagnating in 2003 and 2004. While overall economic factors are important in the dynamism of property markets, in large part this market stagnation may be due to the lack of legally registered rights to land and buildings and to the slowing of investments in land and buildings by the private sector.

The clarification of rights to land and buildings is proceeding, however, on a case-by-case basis, relying on the cases assembled by private attorneys and presented to courts for adjudication. This work is painfully expensive, in large part due to the confused legal framework inherited from the Yugoslav State, modified and regulated

by the regulations and decisions of the United Nations Interim Administration Mission in Kosovo (UNMIK), and increasingly enriched by legislation passed by the Kosovo Parliament.

Private investor interest in "socially owned" land and buildings is limited by several factors:

- the lack of clarity concerning social and private claims to land and buildings nominally in the social ownership sector;
- the lack of clarification of how to meet municipal needs for land and buildings;
- ambiguities about how to satisfy the broader public interest in riparian rights, public right of way, and the protection of sensitive environments;
- the continued debate about restitution (of agricultural land) to prior possessors without progress on specifying the conditions for such restitution;
- the unsatisfied demands of many small agricultural landholders for land, an particularly for land held in social ownership and classified as pastureland;
- the expiring mandate of the Kosovo Trust Agency (KTA) regarding privatization of socially owned enterprises (SOEs) and the land they control; and
- a continued lack of clarity about the roles of the UNMIK and the Government of Kosovo at the central and municipal levels in the definition of property rights.

To help address these constraints on the development of Kosovo, the following activities are identified in the approximate order of their implementation.

Support OSCE Implementation Plan for Achieving Standards

The Organization for Security and Cooperation in Europe (OSCE) is drafting an Implementation Plan for meeting the Standards set by the United Nations (UN) and

has proposed creating a special working group for property. The proposed working group will include representatives from the relevant UNMIK offices, the Provisional Institutions of Self-Government (PISG), and other donors. This work is of fundamental importance for the Kosovars to clarify their international status and to reach consensus about how to organize and implement property legislation.

Improve Legal Framework

Several actions are needed concerning the legal framework.

Harmonize and Simplify Property Legislation

There is an urgent need to complete a detailed analysis of incompatible legislation and harmonize them into a single, understandable, and accessible property rights framework to give guidance to courts, attorneys, Municipal Cadastral Office (MCO) staff, planners, and others on the legally acceptable procedures for adjudicating property rights.

Example: eliminate the "right of first refusal" that must be issued by a municipality before a transaction involving urban land can take place, or by an agricultural SOE for a transaction involving rural land.

Publish Current Property-related Legislation and Train Users of the Law

In addition to a need for access to a complete set of current legislation concerning property, judges and other professionals who administer property law need training on how to interpret and apply relevant property laws, with special emphasis on the new mortgage, registration, and cadastre laws.

Define Tenure Forms and Procedures for Access by Small Farmers to Socially Owned Land

For non-private land not adjudicated by KTA upon expiration of its term, legal procedures favorable to local farmers should be defined for access to agricultural (and pasture) lands. It is important that local farmers are able to buy or lease small parcels of land of sizes and types needed to expand their operations and to reach more commercially viable farm sizes for the types of production in which they are engaging.

Example: Examine opportunities to support a Land Fund or Trust that would offer leaseholds of up to 10 years to small farmers, pending determination of the ultimate disposition of the land.

Consider Market-based Alternatives for Consolidating Fragmented Land Parcels

Fragmentation (the division of land parcels into smaller units as a result of inheritance) is considered to be an issue by MAFRD, which is planning to produce a draft law prohibiting further division of agricultural holdings. In view of traditional rules regarding inheritance and the value Kosovars put on having a plot of land, it is hard to see this policy being implemented. Market-based alternatives for consolidating land parcels should be considered.

Example: A land tax could be instituted related to the value of all land, separate from the buildings or structure built upon it, for the purpose of encouraging putting land into production in its highest use. In the case of agricultural land, a land tax would encourage holders of vacant land at least to rent it to neighboring farmers for annual crops whose value is sufficient to pay a rent covering the land tax. Sales by those who are not interested in making the land produce would also be stimulated.

Municipalities' Administration of Land

The municipalities are gradually assuming more of the responsibilities assigned to them by law and required of them for the orderly administration of land. However, they are constrained by decades of neglect. To enable municipalities to respond more effectively to the land administration challenges of local self-government, the following activities are essential.

Inventory Land Use and Possession Patterns

Municipalities need help in updating their records of socially owned buildings and land, including especially those properties recorded under the possession of the municipalities, to improve the management of such assets and to facilitate privatization and allocation of assets for public uses.

Assist with Municipal Land Use Plans

The privatization or continued public management of properties which are presently socially owned will occur within the framework of municipal development plans, urban development plans, and urban regulatory plans as called for in Law 2003/14 on Spatial Planning, as approved by the Special Representative of the Secretary-General (SRSG) on 10 September 2003. Such plans are urgently needed, and yet most municipalities have very few resources to meet these requirements.

Example: Train the trainers of municipal urban directorate staff in the assembly of basic geographic information concerning the present uses of land and its presentation in a geographic format.

Create a Facility for Land Tenure Training, Research, and Policy Analysis

There is no "urban institute" in Kosovo which can support the municipal and central government efforts at administering land resources[2], and there is no organization like the Farm Bureau that can project from grassroots communities the needs for adequate policies and programs for dealing with Kosovo's serious property issues. Nor is there a "Land Tenure Center" for conducting research on the nature and roots of property issues. Kosovo for a period of years needs an organization that has the specialized staff and capabilities to conduct research into the causes and consequences of land use and tenure problems, to analyze policy options for resolving these problems, to facilitate the public discussion of property issues and their resolution, and to provide material and staff for training programs aimed at helping to resolve the main problems identified.

An Association for the Resolution of Property Issues should be created to advocate for the definition and resolution of property issues. The members of such an association would include representatives from the banking and commercial sectors, surveyors, brokers, farmers, urban improvement associations, land and water protection organizations, and others.

Examples of studies which the association could undertake include the causes and consequences of illegal construction, the separation of responsibilities for the management and possession/use of socially owned property, and the determination of riparian rights and forest conservation when socially owned land is leased or privatized.

[2] The decision to create an urban institute was regulated almost a year and a half ago by the MESP. At this stage, the MESP is developing the organizational structure and hiring staff for the institute.

Procedures for Resolving Small and Medium Enterprises' Property Issues

At the municipal level, there is substantial interest in stimulating private economic activity. In Suhareka, for example, the municipality is working with an association of businessmen to create an industrial park. In other areas, small and medium enterprises (SMEs) are being established with whatever tenure forms that seem to work. These initiatives deserve assistance to find the tenure arrangements for socially owned land and buildings which will give sufficient security to the local investors so as to encourage their investments as well as their success with applying for loans for expanding those investments.

Example: Sponsor a forum under which municipalities can provide input to UNMIK and the PISG concerning the provision of land and related assets for local investors.

Support the Land Administration Program

The Land Administration Action Plan and the program assembled for launching five projects in its implementation deserve support in cooperation with the Kosovo Cadastral Agency (KCA) and the various external donors working with the KCA. From the point of view of property rights, there are three priority themes.

Prepare Mechanisms for Local Oversight of IPRR/Cadastre Operations to Control and Minimize Administrative Misbehavior

Example: Develop a special program in association with the KCA and the Municipality of Pristina to devise workable mechanisms for monitoring the operations of the MCO and for assuring transparent and efficient administration.

Train IPRR/Cadastre Staff in New Registration and Cadastre Laws

Example: Support the Land Administration Program's plan to conduct staff training and development of administrative structures and procedures for the operation of the new immovable (real) property rights registration (IPRR)/cadastre.

Target Properties Deserving of Special Adjudication Focus

The Land Administration program's strategy is to conduct this clarification on a case-by-case basis, as people request such clarification when preparing for a sale, mortgage, or inheritance. It is also possible to develop targeted property rights adjudication efforts for specific types of properties of high priority for specific programs, such as the legalization of certain types of illegal constructions, socially owned apartments, and priority agricultural land.[3]

Example: Assist selected municipalities to conduct intensive campaigns of systematic registration of private and socially owned apartments.

[3] Such "mini-adjudication" efforts, however, should be undertaken only after the IPRR/cadastre system is shown to be operating transparently and efficiently, particularly in the Pristina Municipality, but also in any municipalities selected for a targeted adjudication program.

1.0 Introduction

1.1 Purpose

The purpose of this report is to assess how property rights are currently influencing conflict, investment, agriculture, and municipal governance. The report also identifies possible areas where USAID/Kosovo might provide technical assistance to draft laws, strengthen institutions, and/or resolve conflicts that will enhance household property security and business investment, improve economic growth, and lead to more effective local governance.

1.2 Background

1.2.1 History of Land Administration in Kosovo[4]

Because this region was under the occupation of Turkish Ottoman Empire (it belonged to the *vilajet* [region] of Kosovo), the legal ownership issues related to the immovable properties are regulated through laws influenced by Ottoman legislation and administrative procedures. During the Ottoman period there was no land surveying, and cadastres were a mixture of population and tax roll records. The property ownership was evidenced by a system of *tapi* (allotment certificates). Since no surveying measurements were done, the *tapi* identifies the owner, property, residence of the owner, description of the parcel, boundaries, and names of adjacent parcel owners (their names, dimensions of the boundaries, and additional characteristics relevant in making the identification of the property as clear as possible, especially in regard with the adjacent properties). The *tapi* system in Kosovo was incorporated into the laws and regulations even by the countries that occupied Kosovo after the Balkan wars (Montenegro and the Kingdom of Serbia). Montenegro occupied the districts of Gjakova, Peja, and Istogu, and Serbia—as decided in the Conference of Ambassadors in 1913—occupied the rest of the districts.

The first census of population and surveying of immovable properties with the purpose of colonizing Kosovo—mostly in the fertile lands of the Plateau of Dukagjini (*Rrafshi i Dukagjinit*)—was started by Montenegro in the same year (1913).

After the First World War and the creation of the Kingdom of Serbia, Croatia, and Slovenia in 1918, preparations and quick actions started for the colonization of

[4] Based on Ilmi Zherka, Assistant Professor of Geodesy, Rifat Malazogu, Law School Diploma, Skender Tullumi, Geodesy Engineering Diploma, "Some issues regarding the ownership and the evidence of immovable property registration in Kosovo," June 17, 1999, Tirana. Also based on Jarmo Ratia, UN Economic Commission for Europe, "Development Strategy on Land Administration in the Balkans, and Especially Kosovo," June 20, 2000.

Kosovo by Serb-Montenegrin colonists. This process started in 1919 and ended at the beginning of the Second World War in 1941.

The first cadastral survey, in cooperation with the police forces and the geodesy specialists, started in 1923 and ended in 1937. It had legal power after the final preparation of cadastral documents.

However, because the native Albanian population was largely marginalized in social and economic aspects, they did not consider it important to have ownership documents (*tapi*) for their immovable properties. Another reason they did not often request the *tapi* was the high property tax. Therefore, upon the cadastral survey completion, the land of Albanian owners, inherited generation after generation but without valid *tapi*, was registered as state land for agricultural purposes and was made available for colonization by different ministries. Hence, many Albanian owners were deprived of ownership and possession rights.

This process contributed to a decrease in land fertility, and increase in poverty for Albanians, and a huge migration of population, mostly to Turkey, between 1927 and 1941. This sort of population restructuring was also alleged to be an objective of the regime of that time. Following the Second World War, waves of political revolution and social and economic restructuring gave a strong impetus to the nationalization and confiscation of lands held by families identified with the previous regime.

An important land survey was conducted during 1951-1955. Orthogonal and Polar methods were used in the areas of Gjakova, Peja, and Vushtria, while in the districts Mitrovica, Prizreni, Rahovec, and Ferizaj the aerial photogrammetry method was used.

The last land survey in the entirety of Kosovo was conducted during 1978-1982 via aerial photogrammetry, but was mostly implemented for urban areas.

In the 1990s, the Electronic and Calculation Center (*Gani Qabderbasha*) in Pristina wrote a software program for the maintenance, conversion, and administration of cadastral registration for all of Kosovo.

1.2.2 Summary of the Existing Situation

Although a census has not been done in recent years, Kosovo is estimated to have between 1.9 and 2.2 million inhabitants[5] in an area of 10,895 square kilometers.

[5] *The Kosovo Atlas*, 2002, estimates the population in 1998 to have been 2,175,691, of which 84.1% were Albanian, 8.8% Serbian, 2.5% Roma, 2.9% Muslim (including Gorani and Bosianks), and 2.5% other. The Bengt Andersson paper, "Reforming the Cadastre and Land Administration in Kosovo," presented to the FIG Conference in Washington, DC, in April 2002, estimates a total

There are 30 municipalities. Five of them are Serbian-dominated and eight are ethnically mixed municipalities. Pristina is the municipality with the largest population of about 500,000 inhabitants, compared with 200,000 just before the war. The number of parcels in Kosovo is about the same as the inhabitants (2.2 million), and there are about 340,000 possessors of parcels, for an average of six parcels per possessor.

The median age of the population is estimated to be 25 years. There are approximately 330,080 housing units[6]. The gross domestic product (GDP) per capita in 2002 was about €944. The Consolidated Budget Revenues for Kosovo in 2003 was estimated to be €584 million[7]. Municipal revenues in 2002 were forecast to be €10 million[8].

While all of the former communist/socialist territories of Central and Eastern Europe have undergone a political and economic transition from a nondemocratic socialist economy to a democratic market-based economy, there are some uniquely important factors in the case of Kosovo[9].

Economic Transition

In 1999, Kosovo started the economic transition process, including the reinstating its land records. Under the earlier regime, all urban land (construction land) and land occupied by socially owned enterprises (SOEs) was regarded as socially owned and only user rights were permitted.

Active Discrimination

Following the removal of autonomous status in 1989, there was a 10-year period of active ethnic discrimination resulting in a series of laws targeted at a particular ethnic group. This affected all aspects of life, including the disposition and inheritance of property.

Weak Property Rights Administration Sector

Prior to 1999, the mechanisms for defining and recording land rights were particularly weak in Kosovo. In other parts of Yugoslavia, legislation was passed to

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population of 2.2 million. Due to population mobility, it is difficult to make a precise estimate of the population of Kosovo.

[6] From UN High Commissioner for Refugees, UN Office for the Coordination of Humanitarian Affairs, and Humanitarian Community Information Center, "Kosovo Atlas" (First Edition), Pristina, February 2000. Due to the building boom in the past four years, this number is probably an underestimate.

[7] From UNMIK, Focus Kosovo, p.33, December 2003.

[8] From UNMIK, PISG, MPS, KCA "Proposed Project for Development of Land Administration in Kosovo," 11 June 2003.

[9] Based on UN Interim Administration Mission in Kosovo, the PISG, Ministry of Public Services, and Kosovo Cadastral Agency, "A Land Administration Policy for Kosovo: Policy Document (Draft)," Pristina, 17 January 2003.

define ownership and to introduce a system of recording land rights (the land book), but it was never implemented in Kosovo. In 1999, the public and private institutions and structures needed to establish and support a stable land and property market were largely absent or very significantly underdeveloped.

Conflict

The conflict of 1999 led to large-scale property damage, with an estimated 300,000 homes damaged or destroyed, and the abandonment of as many as 75,000 properties. Many land records were destroyed, while others were removed to Serbia, beginning to a year before the war months in 1999. There has been unauthorized occupation of Serb and Albanian-vacated properties. The United Nations (UN) is trying to encourage Serbs and Albanians to return to their properties, particularly in such areas as Mitrovica. However, this effort will take time and requires support and encouragement of reconciliation at all levels in society.

Rapidly Changing Legal Framework

Due to the recent history of political turmoil in the former Yugoslavia, the validity of the legal framework concerning property rights has been questioned, cancelled, revised, and in general become very confused.

UN Interim Administration[10]

The UN Interim Administration Mission Kosovo (UNMIK) was established on 10 June 1999 by UN resolution 1244, which was tasked with rebuilding the administrative framework and assuming responsibility for the promotion of peace and democracy as well as the provision of justice and security.

UNMIK has been acting as the transitional administration for Kosovo. UNMIK initially brought together other multilateral organizations as full partners under United Nations leadership. This was organized into four "pillars":

Pillar I:	Police and Justice, under the UN
Pillar II:	Civil Administration, under the UN
Pillar III:	Democratization and Institution Building, led by the Organization for Security and Cooperation in Europe (OSCE)
Pillar IV:	Reconstruction and Economic Development, under the European Union (EU)

The head of UNMIK is the Special Representative of the Secretary-General (SRSG) for Kosovo.

[10] Based on Bengt Andersson, "Reforming the Cadastre and Land Administration in Kosovo," paper presented at the FIG Conference in Washington, DC, April 2002.

To obtain early results, UNMIK set up a regional structure with five regional administrators and 30 municipal administrators. It established 20 Kosovo-wide administrative departments in the Joint Interim Administrative Structure. This administrative structure was set up as a means for sharing the responsibility to reestablish and deliver central and municipal administrative services. One key department, the Central Fiscal Authority, prepares the Kosovo consolidated budget.

Each of the 20 administrative departments was led by two co-heads (one Kosovar and one UNMIK international staff). This part of the Joint Interim Administrative Structure is now replaced by the Provisional Institutions of Self-Government (PISG), presented in UNMIK regulation 2001/9, which brings about a new stage of self-government to Kosovo.

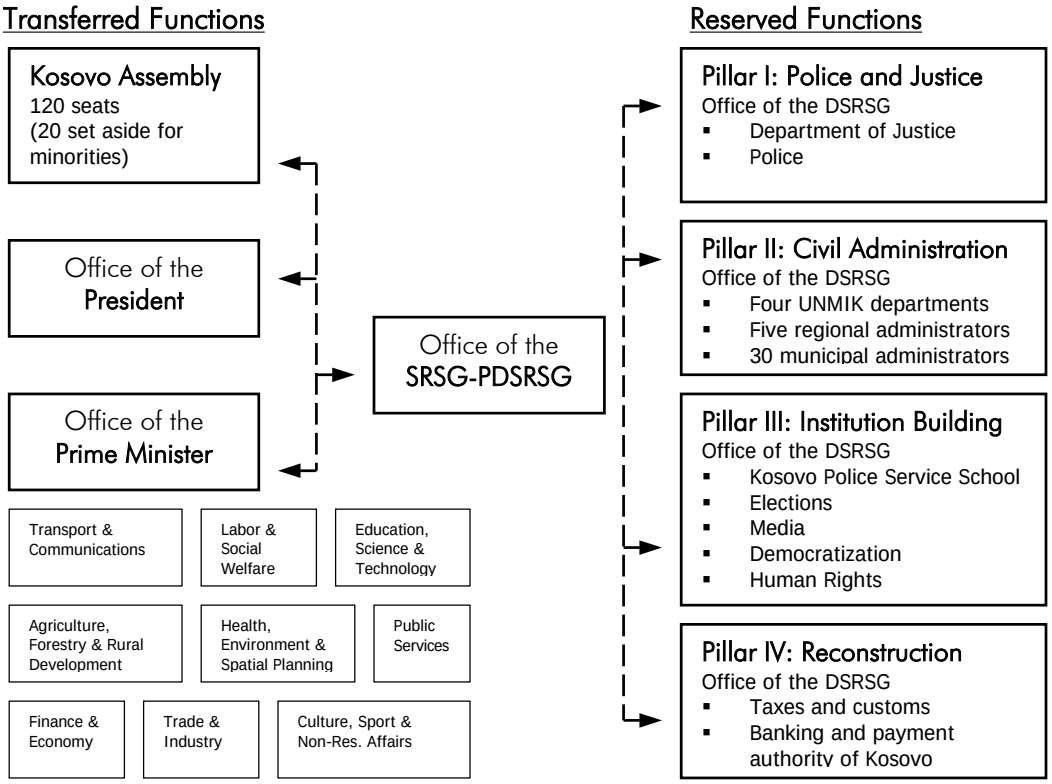
At the local level, 30 municipal assemblies were elected on 28 October 2000. Supervised by their respective UNMIK municipal administrators, they appointed professionally qualified chief executive officers and members of their municipal boards. The municipal board acts as the executive body and is responsible for the day-to-day running of services.

The Kosovo Assembly was elected at the general elections held on 17 November 2001. The Assembly has after some difficulties elected the President of Kosovo, who subsequently nominated a Prime Minister, who submitted his Cabinet to the Assembly for approval (see Figure 1 on the next page).

UNMIK retains the direct responsibility for certain reserved governmental functions, as set out in the Constitutional Framework and further elaborated in UNMIK regulation 2001/19. UNMIK retains a monitoring and oversight role over the PISG. At municipal level, UNMIK core functions have been defined. International staff in the municipalities will be reduced to an appropriate level in order to meet these requirements. Gradually these core functions will be transferred to the regional level so that there will be no international staff operating in individual municipalities.

The establishment of the PISG and the division of responsibilities into transferred and reserved functions initially increase the political and administrative complexity. Experience from the municipalities indicates that implementation of policies and decisions have been difficult during the transition period. This is coupled with serious constraints arising from the lack of trained and experienced local staff at all administrative levels.

Figure 1: The Governmental Infrastructure in a Combined UNMIK/PISG Chart



Pertaining to the property rights issue, UNMIK's continued power to legislate and administer concerning property rights matters may be contributing to a certain passiveness on the part of Kosovo legal specialists and a reticence to produce proposals for legal solutions to pressing property rights issues. This reservation of power by UNMIK also may help create an "us versus them" mentality on the part of the general population who sense an opportunity to carry out questionable transactions and challenge the foreign administrators to catch all their subtleties and energies.

1.3 Assessment Objectives and Structure

The principal objective of this assessment is to provide a comprehensive picture of the property rights situation in Kosovo. By researching and documenting past, ongoing, and planned activities in this area, this assessment report attempts to clarify confusions regarding the current state of formal and informal property rights and how they affect conflict, investment, agriculture, and municipal governance. This assessment also evaluates informal property rights and options for converting socially recognized property rights into registered titles that can be bought, sold, and honored as collateral. The assessment team will address all manner of property issues (e.g., movable and immovable, private and public, and rural and urban) as they pertain to Kosovo.

2.0 Documentation of Property Rights: IPRR/Cadastre

An immovable (real) property rights registration (IPRR)/cadastre system stands on three information pillars:

1. a cadastral map or plan, which describes the location and shape of property units, such as land parcels and "pieces" of buildings such as apartments and store fronts;
2. a register of the identities of the holders of rights to those property units; and
3. an archive of the legal documents describing the locations and origins of the property units and the interests people acquire to the property units (such as subdivision plans, sales contracts, mortgage agreements, inheritances, and court decisions).

The purpose of the IPRR/cadastre system is to provide authoritative documentation of who owns what properties. In Kosovo, the present IPRR/cadastre system is basically the same system as operated prior to 1999.

2.1 Municipal Cadastral Office Component

The Municipal Cadastral Office (MCO) has traditionally maintained key elements of the IPRR/cadastre system:

- A **cadastral map** showing the boundaries of rural and urban parcels and their parcel numbers. See the Appendix D for the best examples of a cadastral map, linked to an orthophoto. Normally the MCO has the line map with parcel numbers, shown in the appendix as an overlay on an orthophoto.
- A **cadastral change book** showing any changes in the existence of parcels (through subdivision or merging) and/or in the names of the physical and legal persons who possess each parcel. The book shows the name of the previous possessor and the characteristics of the parcels, as well as the name of the present possessor and characteristics of the possessed parcels. The MCO records changes in such information in the time order in which the requests for recording arrive in the MCOs. See Appendix D for examples of pages from a cadastral change book.
- A paper-based and/or digital file of **possession lists**, each showing the name and number of the cadastral zone in which the possessed parcels are located, the number of each possession list, whether the parcels are located in urban or rural areas, and whether the parcels are private or socially owned. See Appendix D for examples of possession lists.

Each possession list shows one or more parcel held by the possessor. Each parcel is described with:

- a parcel number referencing the parcel on the cadastral map as well as a plan number, sketch number, and place name where the parcel can be found;
- the use ("culture name") of the parcel;
- the class of land (used to describe agricultural land);
- the area of the parcel in hectares, ar (100 square meters), and square meters; and
- the date of the last update of the information about each parcel on the possession list.

For parcels that contain a house of the possessor, one line on the possession list records the use of the parcel for a house, showing the area occupied by the house. A second line shows the area of land around the house classified as "yard" (*oborr*). For rural properties containing a house, a third line describes the area used for agriculture (pasture, cultivation, fruit orchard, or grape arbor).

- A **document archive** of the documents submitted by the persons requesting the recording of the new information. These documents include court-validated sales contracts, inheritances, gifts, court decisions verifying or changing the ownership of parcels, and evidence about the creation of new properties through the subdivision of parcels. In large part thanks to the Kosovo Cadastral Support Program, these MCO archives are typically much better organized and preserved than the archives of the municipal courts. An MCO archive is depicted in the image at right.

Some MCOs, anticipating the implementation regulations for the recently approved Law 2002/05 on the Establishment of an Immovable Property Rights Register have begun to add to their recording duties. They now maintain special books and files on apartments and stores under ownership different from other units of the building in which they are located, and special books and records showing basic information about mortgages. These are new functions for the MCOs, since under the previous regime, records about the users/renters of "pieces" of buildings were maintained by the managing entities of those buildings, and mortgage agreements were kept in the courts and the lending banks which used mortgages to guarantee loans.

2.2 Municipal Court Component

The municipal court is a second key element in the IPRR/cadastre system at the

municipal level. The typical municipal court has one or more specialized staff (the "Referent") in an office located near the entrance to the court who verify the identities of the parties to any contract or other document requiring such verification. The Referent also records in a daily log book in the order in which the documents are received, the names of the parties to each contract, the type of document whose signatories' identities are being verified, the date of the recording, and the address of the property in case the document refers to a parcel or building or piece of a building. Once stamped as verified, a copy of each document is filed in the court archives by type of document in the time order in which they were recorded. (See right for the Pristina Court Referent and document log and files he has recently received.)

Pristina Court Referent and 2004 documents.

The court archives one copy of recorded documents referencing real properties, the new owner gets another copy, and the MCO receives the original. However, the municipal courts' archives are rarely used for title searches as done in other countries using the "deed-based" registration system similar to that of Kosovo. Rather, the cadastral change book in the MCO provides the information that people need to verify that the person who claims to be the possessor of a property is the legal possessor. The archives in the MCOs also contain documentation about transactions or other activities affecting rights and boundaries in case a deeper historical search is needed.

Municipal court archives.

Until recently, however, the court archives have been the only place to find evidence of transactions involving apartments and storefronts (other than the office files of often-defunct entities that previously managed such properties). Also, court archives are the only place where people can reconstruct the MCO records about changes in ownership or other rights to parcels in those municipalities where the MCO records have been carried away or otherwise destroyed. However, many municipal court archives are poorly housed and minimally maintained. They are often organized without indexes and rely on a

single person's memory about how the records are organized.

2.3 Deficiencies of the Present IPRR/Cadastre System

The existing IPRR/cadastre system is incomplete and inaccurate in Kosovo. Several factors have contributed to an unacceptable situation in most municipalities:

- Many MCO records were removed before and during the 1999 conflict, or destroyed in that 1999 conflict. The OSCE 2002-2003 report noted several examples of missing cadastral maps, books, and/or possession lists due to the removal of records to Serbia proper, including the MCO in Mitrovicë/Mitrovica that only has maps and cadastral books from 1955 to 1975 and then from 1986 to 1989. For Shtime/Štimlje, original cadastral maps are available only up to 1985. The MCO in Suharekë/Suva Reka has original maps only from the period prior to 1959. After the conflict, more than 70% of the Prizren records were removed to Serbia. At present, the Gjilan/Gnjilane MCO records are complete only up to 1958, while the MCO in Viti/Vitina is working on the basis of data from before 1988[11]. (See the Appendix E for a short history of the evolution of the Gjakova MCO after it reopened in 1999.) Due to these effects of the conflict in 1999, the information in the land cadastres is often out-of-date by decades. In worst cases due to the removal of original cadastre documentation during the conflict, the only available cadastral plans date back to 1957, although a few have been updated since the removal in 1999. Even in areas where the cadastre books and plans are more current, they are inaccurate in 30% of cases.
- The property registration system was systematically circumvented in the years prior to 1999 due to discriminatory practices. The cadastral records remain incomplete and inaccurate partly because discriminatory legislation was in effect between 1989 and 1999, which made property transactions between and to Kosovo Albanians illegal. The result was that such transactions were done informally and not registered either with the courts or in the cadastral offices. While some of the missing housing-related transactions can now be updated and legalized by the Housing and Property Directorate (HPD) by filing a Category B claim (see Section 3.5) with the Housing and Property Claims Commission (HPCC), gaps still exist for properties whose prior possessors have not filed claims.
- Some people neither validate transactions in courts nor record transactions in MCOs because of what they consider to be prohibitive fees for recording or validating documents. The transfer of rights over property, even if decided by the court, only becomes effective once the transfer is recorded at the MCO. Many people do not come to the MCO for recording subdivisions of parcels because they consider the cost of the cadastre measurements required to undertake the changes as prohibitive (approximately €100). As noted in the OSCE 2002-2003

[11] Information from OSCE, 2002-2003.

report, a significant portion of Roma/Ashkalia/Egyptian property right holders have not registered or legally secured their rights in the registry because they either were not fully cognizant of its value or felt the fees had been too burdensome[12].

- Other people do not record their transactions due to their lack of awareness of the importance of legal possession. In the minds of many people, a written and witnessed sales contract, for example, is sufficient proof of a valid transaction. The recording of inheritances is often delayed indefinitely. In one village where the Kosovo Cadastral Agency (KCA) has done a comparison of the cadastral records with factual possession, 95 parcels in 1957 had been subdivided into 306 parcels by 2003, and there were no records of these subdivisions or transfers of ownership since 1957. In the Pristina MCO, there are many instances of people coming in with valid possession lists, but the cadastral map does not show the subdivisions of parcels identified on the lists.
- The post-conflict use of property records in Serbia for the conduct of transactions is confused and often duplicated. People go to the places where the cadastral records have been transferred to check the possession of the parcels they wish to transact, and record there the documents showing the changes effected by the transactions. Not being accessible to banks and potential buyers in Kosovo, these records do not provide the desirable level of security, and may produce two "official" sources of property information, both of which may be incomplete and inaccurate.
- Many courts and MCOs do not maintain the document archives properly, making title searches in cases of conflicts very difficult.
- In response to a history of social conflicts, during the 1990s, the courts issued decisions nullifying contracts between agricultural SOEs and private entities as the contracts were made under duress[13]. The vast majority of changes ordered by these court decisions, however, have not been recorded in the system.

2.4 Improvements in MCOs since 1999

The Swedish, Norwegian, and Swiss governments; UNMIK; and the UN Human Settlements Program since 2000 have combined to provide assistance to the Kosovo Cadastral Agency through the Kosovo Cadastral Support Program (KCSP) to remedy at least some of the constraints on the IPRR/cadastre system in Kosovo.

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[12] See OSCE/United Nations High Commissioner for Refugees, "Ninth Assessment of the Situation of Ethnic Minorities in Kosovo (September 2001-April 2002)," 22 May 2002, paragraphs 105-106, page 33; and OSCE/United Nations High Commissioner for Refugees, "Tenth Assessment of the Situation of Ethnic Minorities in Kosovo," 10 March 2003, Section 4(II), page 47-48.

[13] An example is Decision 232/94 of the Lipian/Lipljan Municipal Court, 22 July 1994. The decision nullifies such contracts upon finding that the transaction was made under threat of violence from the government representatives and the cooperative against the parties, which resulted in an unrealistically low sale price.

Since 2000, the year that the KCSP began, the KCA and MCOs have reconstructed most of the land cadastre more or less as it was prior to 1999. Cadastral maps and possession lists were found in some MCOs—usually older copies of updated originals that had been removed or destroyed. Some cadastral map copies were from the 1950s through the 1970s. For several MCOs, digital copies were found of the possession lists, although some were not current. In other MCOs, older paper copies were the only lists available.

The KCA embarked on a very rapid program of creating a database from all available possession lists, including the digital copies found after the conflict, in each MCO. The KCA has also been digitizing the available cadastral maps, even the older copies, since they are the only map-based information available. Approximately 10,000 digitized maps have been scanned, and in 11 municipalities the process of vectorizing has started. To assist in the updating of these older maps, aerial photos were flown for all of Kosovo, and 40% have been converted into digital orthophotos. A new network of first order geodetic points has been established, and substantial progress has been made on second and third order points.
The possession data is reconstructed and updated in 14 municipalities, based on data found in Kosovo and incorporating new transactions. In 13 municipalities the reconstruction is not complete due lack of data from different time periods. For instance, in Podujevë/Podujevo there is a data gap for the time period 1984 to 2000. These municipalities are continuously updating the possession data with new transactions, where the parties to the transactions with legal advice are reconstructing the chains of title. Some of these cases require court review and approval. The possession list data updating, however, is not matched by updated cadastral map descriptions of parcel boundaries referenced on the possession lists.

The possession lists database, including possession lists that have not yet been updated from the information found after the conflict, contains information on approximately two million parcels.

About 55% of the parcels in the database have possession lists and cadastral plans that have been updated through the end of 2000, so that there is a correspondence between the two databases. This means that for every parcel identified in the possession lists there is a parcel number which can be found on a cadastral map with the same (or nearly the same) area in both cases. However, this correspondence pertains only to the official information as of the end of 2000, and does not describe the correspondence today between officially documented property rights and the facts on the ground.

When people want to get official confirmation of their property rights, all they can find is what the MCOs have, which is usually out of date (does not correspond with the facts on the ground). Such people who want to acquire legal documentation

using proper procedures then typically contract with an attorney to regularize the official property rights data.

In the KCA central office and in the 27 MCOs where the KCA has worked (three MCOs are in areas with administrative ties to Serbia and have refused to participate in the KCSP), over 125 computers, printers, and other equipment have been installed. Over 300 staff in the KCA and the MCOs have been trained in the use of the databases and the hardware on which they run. The digital files of possession lists have been distributed to the MCOs where they are in daily use.

2.5 Improvements in Municipal Courts since 1999

The government and donors have made substantial improvements in municipal courts since 1999, with new offices and information technology in most municipalities, and with the judges and legal staff receiving training on legal procedures.

2.6 Legal and Institutional Basis for the New IPRR/Cadastre System

Very important progress has been made on the legal issues involved in producing a modern property-based registration system similar to that functioning in other European countries. Two laws have been passed by the Kosovo Parliament:

1. Law 2002/5, on the Establishment of an Immovable Property Rights Register, promulgated by UNMIK Regulation 2002/22. This law establishes the basic concepts and procedures for a modern immovable property rights register which will evolve out of the present flawed system inherited from the past; and
2. Law 2003/25, on the Cadastre, approved in December of 2003. This law describes the basic concepts and procedures for defining properties to which the information about rights and other legal interests will be attached. The law was promulgated by UNMIK Regulation 2004/4 on 27 February 2004.

Article 3 of the Cadastre Law describes the administrative structure of the new IPRR/cadastre system:

> Section 3
> Authorities and Responsibilities
>
> 3.1. The Kosovo Cadastral Agency (hereinafter: "KCA") shall be responsible for the cadastre, regulation and maintenance of the all official evidences for the immovable properties based on the survey data and land cadastre and is competent for the general supervision of the cadastral activity and also for issuing other sub-legal acts related to the cadastral activity.
>
> 3.2. Municipal Cadastral Offices and the licensed surveyors, during their activity development, conform to this law, are under the authority of the Agency,

Administrative Instructions and sub-legal acts that are issued by the Ministry of Public Services.

Similar responsibilities are defined for implementing the provisions of the law on the IPRR, with the KCA having overall supervisory responsibility, and the MCOs conducting the day-to-day registration duties. The MCOs are the administrators of these two inter-linked laws which define the new IPRR/cadastre system under the general supervision and control of the KCA. This new administrative structure, however, has not been finalized in practice.

2.7 Proposed Program for Improving Land Administration of Kosovo

The KCSP ended on 31 October 2003, but the KCA continues to function (albeit at a reduced staff level and at civil service salaries), and has installed a cost recovery system for the sale of information from the databases created under the KCSP. A project proposal has been prepared for continuing the effort to rebuild and modernize the property registration system and to strengthen Kosovo's land administration capabilities. The components of that proposed three-year land administration program are:

Component A: Institutional Strengthening

This component will support:

- Institutional and capacity building of the registration/cadastre organization;
- Development of a comprehensive business plan for the IPRR/cadastre organization;
- Improvement of the legal framework for real property matters;
- Design and implementation of a common information and communications technology/information management strategy for the IPRR/cadastre organization and other stakeholders and customers;
- User need analyses to determine the needs of the user community of registration/cadastral services, geo-information, and property rights;
- Public awareness campaigns and consensus-building strategies; and
- Project management, monitoring, evaluation, and reporting.

Component B: Cadastre Maintenance and Immovable Property Rights Registration Development

This component would focus on the improvement and streamlining of the new integrated IPRR/cadastre system, and support efforts to ensure that the system is maintained up-to-date in the local offices operated by the KCA. The basic approach is for the IPRR/cadastre records to be updated on a case-by-case basis, as people interested in recording changes in ownership or property boundaries come into the

MCOs. To the degree desired by municipalities, and pending sufficient funding, groups of properties in municipalities could be adjudicated (identified geographically and legitimate rights identified). Illegal settlements, apartments in privatized SOEs, and agricultural land within irrigation perimeters could be targeted. The component would focus on developing affordable technical standards and regulations; building an integrated IPRR/cadastre system based on business/corporate plan principles; and training MCO staff, private sector surveyors, lawyers, land use planners, real estate agents, bank managers, and others necessary for the maintenance of the IPRR/cadastre system. This component will also assist with the upgrading of equipment and IPRR/cadastre offices, implementing quality control mechanisms.

Component C: Kosovo Cadastre and Land Information System Development

This component would focus on developing and implementing a multi-spatial information system ensuring that the integration of IPRR, the Kosovo Cadastre Interim Database, and other core geographical/spatial data registers in the KCA maintained Kosovo Cadastre and Land Information System (KCLIS) is functioning. It would also ensure, through joint projects with data producers, that the integration of KCLIS and other systems such as property tax register, civil register, and utility maps (e.g., water and electricity networks) are functioning.

Component D: Geographical/Spatial Data Infrastructure Development

This component would focus on creation of a master plan for geographical/spatial data infrastructure development that identifies the KCLIS and mapping related data sets, products, and services that are to be provided in short and medium term by the KCA, other public institutions, and private sector. It shall establish capacity within the KCA through a pilot project related to data standards; technical knowledge; and development of the data models, different products, quality control, and services. The final production of KCA data shall be outsourced to private sector companies.

Component E: Education, Continuous Professional Development, and Training

This component would focus to improve professional capacity in the KCA, MCOs, and the private sector to reflect demands of the society and provide improved cadastral services through continuous human resource development based on individual needs assessments, training courses, and study visits related to development issues. This would include providing support to the University of Pristina to develop curriculum with relevant faculties related to surveying and GIS and starting partnerships with other universities in the region or Europe to provide possibilities for Kosovars to study abroad. Capacity building measures shall be addressed in three levels: societal (policies, legal frameworks), organizational, and individual.

2.8 Institutional and Implementation Arrangements

The KCA is an executive agency in the Ministry of Public Services (MPS) defined in UNMIK Regulation 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo. The Chief Executive Officer of the KCA reports directly to the Minister. The KCA is responsible for the development of the legal regime and the coordination of its implementation relating to the cadastre and other matters concerning the land information system in Kosovo. The KCA's areas of competence are mainly geodesy, surveying, geographical information systems, real property registration, and mapping.

The KCA will be the main institution responsible for the overall coordination and execution of the proposed project and its different components.

Given the foreseen multiple sources of funding for the implementation of the proposed project an Inter-Ministerial Coordination Committee has been established through a government decision[14], chaired by the Minister of Public Services, with the KCA as the implementing organ, and with members composed of the Ministry of Agriculture, Forestry, and Rural Development (MAFRD); the Ministry of Environment and Spatial Planning (MESP); the Ministry of Economy and Finances; the Ministry of Trade and Industry; and the Ministry of Transport and Telecommunication. The committee will also include representatives of the SRSG Office, Pillar II and IV, and the Kosovo Trust Agency (KTA). An initial meeting was held in January 2004 to establish plans for the coming months. The functions of the Steering Committee are to:

- provide overall policy orientation to the implementation of the project;
- endorsement of overall work plans;
- provide advisory support to the KCA in its responsibilities to implement the project;
- monitor the project implementation on policy, programming and financial matters;
- review and endorse progress reports prepared by the KCA and consultants in the above matters.
- request additional monitoring activities, as deemed necessary; and
- provide recommendations regarding the implementation of the project as well as changes and additions to the project.

The Secretariat for the Steering Committee is held by the KCA.

[14] See this decision in the Appendix D of this paper.

The MCOs as of now fall under the authority of the municipalities. Until changes are made in the structure of the IPRR/cadastre organization, the implementation of the project will be complicated. Even after the organizational structure of the MCOs is changed to come under the KCA, the work will have to be done in close coordination with the municipalities, one of the main stakeholders in land administration.

There is much work to be done to implement this program successfully. The various government agencies, UNMIK, and international donors should coordinate carefully with the Steering Committee to mobilize the necessary resources and monitor their uses.

2.9 Constraints

There are several serious constraints to be overcome.

2.9.1 Parallel Administration

The KCA and the KCSP has presented its activities and aims several times to the representatives of cadastral offices in Zvecan, Zubin Potok, and Leposaviq to get them included in the overall activities and the organizational structure of the new IPRR/cadastre system. Despite interest shown in the technical issues and cooperation regarding the development of a reference network and training, there has been no progress in changing the organizational structure in these areas. These offices are still under the supervision of the Geodetical Authority of Serbia, preserving the parallel structures in this part of Kosovo. Cadastre and property rights registration will be delayed in these municipalities under these conditions. This will lead to a lack of public confidence and awareness of the cadastre and immovable property rights registration in these parts of Kosovo.

2.9.2 Low Salaries

Since the preparation of the proposed program, the low salary levels in the public sector have been addressed as the most critical issue for the sustainable development of IPRR/cadastre organization. This has affected the MCOs, where many of the qualified personnel have left their positions. This could also be the case for the KCA after the local staff who worked previously with UN salaries will have to accept civil servant salaries. The average monthly salary last year was €167 in the public sector.

2.9.3 Administrative Transparency and Efficiency

Related to this salary issue is the question of how to monitor and minimize improper administrative practices in the new IPRR/cadastre system. Property values are very high in Kosovo, so transactions that come through the MCOs often involve

substantial sums of money. There will be an inevitable temptation for low-paid MCO staff to find ways to charge "facilitation fees," and perhaps more importantly, to resist the efforts of the KCA and municipalities to establish professional and transparent procedures for registering transactions, subdivisions, and merging of properties.

Adding to this difficulty is the as-yet-unclear line of authority over the staff of the MCOs. The budget for the MCOs' staff salaries and operations and the selection and evaluation of the staff is shared between the KCA and the municipal councils. With such ambiguities, it will be hard to monitor and minimize improper administrative practices in the operations of the IPRR/cadastre.

Should false or falsified or "modified" transactions be allowed to enter into the IPRR/cadastre, the main purpose of the system to be the authoritative source of information about property rights in Kosovo will be thwarted. Public confidence will be eroded. The investments in updating and creating the new system will be lost. The security of rights to immovable property that underlies the market economy will be reduced or lost completely. There is already evidence from some MCOs of improper administration. The dangers of distorting recording procedures can be seen in Albania's Immovable Property Registration System, a system that is similar to the IPRR/cadastre system in Kosovo. The Albanian government and the foreign donors supporting the creation and operations of the Immovable Property Registration System have been lax in protecting the public interest and past investments in creating the system. Such a catastrophe must be avoided in Kosovo. A first priority is to be very attentive to the operations of the MCOs in Pristina, where the property market is the largest and most active, and where property values have soared.

A variety of monitoring and control mechanisms must be introduced to minimize such problems in Kosovo.[15]

2.9.4 Kosovo in the Balkans

The above-mentioned efforts in land administration capacity building toward a market-oriented economy are focused solely on the Kosovo context. However, these efforts would be more cost effective if they were coordinated with similar programs in the region. From the point of view of external investors, if the smaller countries of the region (Serbia/Montenegro, Macedonia, Slovenia, Croatia, Bosnia-Herzegovina, and Albania) have completely idiosyncratic property legislation and registration/cadastral systems, the cost of doing business in the region is much higher than if laws and land administration are "harmonized" to a degree. This high cost could be a constraint to the development of the region. Harmonization of basic

[15] J. David Stanfield, "Immovable Property Registration Systems: Hopes and Fears," paper presented at the *Congreso Iberoamericano de Registro de Propiedad*, Lima, Peru, 3-7 November 2003, Terra Institute and Land Tenure Center Working Paper.

laws and institutions also shows a willingness in the region to overcome the divisions of the past.

Toward this end, a series of workshops on regional land administration questions would be useful. The objectives of these workshops would be to coordinate land administration activities and concepts in such a way as to learn from regional land administration experiences, to facilitate attracting investments, and to assist with the future integration of the smaller Balkan countries into the European community.

This series of workshops could address the following suggested topics:

1. What mapping and GIS standards should be used for legal cadastres?
2. The definitions of cadastral units (what immovable properties are shown on the cadastral maps to which legal rights are assigned).
3. Identification numbers for these cadastral units.
4. Main constraints to the dynamic functioning of real estate (immovable property) markets.
5. Options for merging immovable property registration and cadastral information systems.
6. Metadata systems for archiving and managing land information files (graphic and textual).
7. Experiences with programs that restitute land and buildings to ex-owners.
8. The options for adjudicating rights to housing built without permits.
9. Procedures for adjudicating rights to properties which people claim to own but who do not have legally valid documentation of those claims.
10. Options for the conversion of possession rights to land into ownership rights.
11. Procedures for the privatization of socially owned property and enterprises.

Other themes of interest would be considered as the workshops develop.

2.10 Resources Needed for the Land Administration Program

The proposed program has been developed to the point of approximate estimations of costs of components (see Table 1 on the next page). Arrangements are being sought to provide the financial and technical support needed for this program.

Table 1: Estimated Land Administration Program Costs

Project Component	TOTAL		Foreign Assistance			TOTAL
	KCA	Foreign	2004	2005	2006	
Institutional Strengthening and Program Management	600,000	1,600,000	600,000	500,000	500,000	2,200,000
Cadastre Maintenance and Immovable Property Rights Registration Development	500,000	600,000	200,000	200,000	200,000	1,100,000
KCLIS Development Program	400,000	600,000	200,000	200,000	200,000	1,000,000
Geographical Information/Spatial Data Infrastructure (GII/SDI) Development Program	400,000	1,000,000	200,000	400,000	400,000	1,400,000
Education, Professional Development, and Training	200,000	600,000	200,000	200,000	200,000	800,000
TOTAL FUNDING (EURO)	2,100,000	4,400,000	1,400,000	1,500,000	1,500,000	6,500,000

Main assumption: Budget does not include MCOs. When organizational changes will be implemented, budget allocation from municipalities to run cadastral offices have to be added to the KCA budget. It is estimated that budget for local offices for three years period is about €3.5 million. KCA and MCO budgets also include the operational costs.

3.0 Legal Basis for Property Rights

The definition and interpretation of property[16] laws in Kosovo are made especially complicated by several bodies of laws that effect property rights. These include pre-1989 Yugoslav law, certain non-discriminatory law issued between 1989 and 1999, UNMIK regulations, and laws passed by the new Kosovo Assembly. Although UNMIK has issued legislation on which of these bodies of law prevails, there are gaps and ambiguity with respect to property-related matters.

The basic principles of which laws are in effect are defined in UNMIK Regulation 1999/24, as amended by Regulation 2000/59, on the Law Applicable in Kosovo. Section 1 states:

> 1.1 The law applicable in Kosovo shall be:
>
> The regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued thereunder; and
>
> The law in force in Kosovo on 22 March 1989.
>
> In case of a conflict, the regulations and subsidiary instruments issued thereunder shall take precedence.
>
> 1.2 If a court of competent jurisdiction or a body or person required to implement a provision of the law determines that a subject matter or situation is not covered by the laws set out in section 1.1 of the present regulation but is covered by another law in force in Kosovo after 22 March 1989 which is not discriminatory and which complies with section 1.3 of the present regulation, the court, body or person shall, as an exception, apply that law...

Thus, there are potentially four bodies of law, the three categories mentioned in Regulation 2000/59 as well as new laws passed by the Kosovo Assembly and promulgated by UNMIK, which must be consulted in order to ascertain the legal basis for land tenure, property rights, and transactions. A further complication is that it is possible that only certain provisions in a law remain in force, resulting in a patchwork of relevant legislation regarding property rights.

The result of Section 1.1 is that several laws from the Yugoslav time period are once again in force, making many laws in Kosovo outdated and inappropriate for a system based more on private ownership of real property and market economy principles.

[16] Unless otherwise indicated, the term "property" refers to "immovable property," real property, real estate, land, and other similar terms. The term includes parcels of land and the buildings, or permanent facilities attached to the land, and also pieces of buildings, such as apartments and stores, which have ownership separate from that of other parts of the building.

Two laws have been repealed in whole as discriminatory. UNMIK Regulation 1999/10 states:

> The following laws, which do not comply with the standards referred to in section 2 of UNMIK Regulation No. 1999/1, are repealed in Kosovo:
>
> The Law on Changes and Supplements on the Limitation of Real Estate Transactions (Official Gazette of Republic of Serbia, 22/91 of 18 April 1991);
>
> The Law on the Conditions, Ways and Procedures of Granting Farming Land to Citizens Who Wish to Work and Live in the Territory of the Autonomous Province of Kosovo and Metohija (Official Gazette of Republic of Serbia, 43/91 of 20 July 1991)...

Although Regulation 1999/10 appears to be a straightforward repeal of discriminatory legislation, it remains unclear what validity is given to decisions and ownership rights granted under the revoked laws. Land market transactions are taking place based on ownership rights granted under legislation that can be considered discriminatory. The UNMIK legal office states that a determination will be made on a case-by-case basis, leaving a considerable degree of uncertainty for property rights.

To date, there has not been a comprehensive legal analysis of property legislation still in force and a subsequent gap analysis. There is also no compendium of relevant property laws that would provide guidance to legal professionals, judges, and institutions that make decisions concerning property rights. Instead, decision makers must identify and locate relevant laws and issue decisions on an *ad hoc* basis, often using outdated source material. In the case of court proceedings, private lawyers provide legislative references for judges, risking a biased decision since the judge likely only receives references to legislation that is in favor of the lawyer's client. Also, the legal basis may have been superceded by subsequent legislation but there is no source or reference that can be used to verify the status of the provisions cited.

The following sections will discuss specific aspects of the various types of property and will highlight examples of gaps and other ambiguities in existing property legislation.

3.1 Private Property

Urban property is regulated by several laws and regulations:

- Law on Basic Property Relations (Official Gazette SFRY, No. 6/80)
- UNMIK Regulation No.2003/30 On the Promulgation of the Law Adopted by the Kosovo Assembly on Spatial Planning
- UNMIK Regulation No.2000/53 On Construction in Kosovo

- Law on Land for Construction (Official Gazette SAPK, No.14/80)
- Law on Amendments and Supplements to the Law on Land for Construction (Official Gazette SAPK, No.42/86)
- Law on Construction of Facilities for Investment and Commercial Purposes (Official Gazette SAPK, No. 5/86)
- Law on Construction of Annexes to Buildings and Conversion of Common Premises into Apartments (Official Gazette SAPK, No. 14/88)
- UNMIK Regulation 2002/12, On Establishment of the Kosovo Trust Agency
- UNMIK Regulation 2003/13, On the Transformation of the Right of Use to Socially Owned Immovable Property.

Agricultural land is regulated by the following laws and regulations:

- Law on Agricultural Land (Official Gazette SAPK, No.21/84)
- UNMIK Regulation.2003/6, On Promulgation of the Law Adopted the Assembly of Kosovo on Forests in Kosovo.

A new law on agricultural land is currently in the drafting process.

The current status of real property rights in Kosovo is unclear. Ownership and other real rights to property have yet to be clearly defined in current legislation. Instead, the basic provisions on rights to property are set forth in the Law on Basic Property Relations[17]. It contains rules about rights to ownership, use, and transfer, but reflects clearly outdated concepts. The law states that citizens, associations of citizens, and other civil legal entities can be holders of property rights[18] and that property rights can exist both over real property and other material objects[19]. The problem is to define what ownership really means. Ownership exists over manmade objects like buildings and constructions but ownership rights to land are more complicated. A citizen can hold a property right over objects that serve to satisfy his or his family's personal needs[20] as well as over agricultural land, woods, and forestland to gain personal income[21]. However, only user rights are given for land that is socially owned but has a privately owned house on it, and the user rights transfer with any subsequent transfer of the house.[22] Other parts of the law—for example, the provisions related to mortgages—have been superceded by recent legislation.

[17] Law on Basic Property Relations (Official Gazette SFRY, No. 6/80).
[18] Article 1.
[19] Article 2.
[20] Article 9.
[21] Article 10.
[22] Article 12.

As stated above, the Law on Basic Property Relations contains outdated concepts that were drafted when the government wanted to limit the amount and scope of private ownership. The Federal Republic of Yugoslavia Constitution of 1974 introduced the concept of social ownership, a unique concept found in former Yugoslavia. Theoretically, it means that property is owned "by no one and by everyone" or simply, that society as a whole has the vested ownership right and natural persons and legal entities are only the users. The Law on Basic Property Relations supported the principle of social ownership by allowing people to own objects (buildings or houses) but granted only user rights to the land. The concept was further reinforced by the fact that the rights to the land were granted only as long as the rights attached to the object[23]. Thus, the possession of urban construction land is less than full ownership because the right to transfer all or part of the land only exists if the object is transferred as well and the rights to use and enjoy the land can be lost if the object ceases to exist. Over time, the legal interpretation of the rights of the possessors, including the procedures of expropriation, has accepted the bundle of rights attached to "possession" to closely resemble "ownership." Possession includes the right of the possessor to exclude others from use, the right to enjoy the property, the right to sell, give as a gift, or give as inheritance to the possessors' heirs. Perhaps the term "possessor" and not "owner" makes it easier for the legislator to define restrictions on the use of the property for environmental protection or the taxation of the property, without having to defend against charges of illegal takings. The ambiguity of the term, however, deserves clarification.

The *Deutsche Gesellschaft für Technische Zusammenarbeit* (GTZ) is in the process of helping to draft the new Civil Code for Kosovo. Provisions on immovable property issues will be included in the real rights section. The draft code is to be presented to the Kosovo Assembly in April 2004, but the drafting team was not in a position to share a copy of the draft with the USAID assessment team during its visit. However, the drafters indicated that the Civil Code will recognize two types of property ownership: public and private. There is apparently a debate on what do with the concept of "social ownership." The drafters recognize it is an outdated concept and have to decide whether to regulate the issue directly in the Civil Code or leave the issue to be addressed in a special law. In any event, property that is currently under "social ownership" will have to be divided and assigned to public or private ownership. The code will also regulate other aspects of immovable property such as registration requirements, inheritance, contracts, and condominium law.

Briefly, some of the current problems that exist with ownership/possession of private land are the following:

- Current ownership/possession information is not reflected in the cadastre. As stated in more detail in Section 2.0 of this assessment report, some maps and possession lists were taken to Serbia or have been destroyed. Most of the data is

[23] Article 12.

from prior to 1999—some even goes back to the 1970s—and most does not reflect changes that have occurred as the result of inheritances, subdivisions, and other transfers. Owners/possessors are not able to transact their property if the property information is not current.

- There are competing claims to certain residential property and uncertainty over ownership decisions made between 1989 and 1999. UNMIK regulations have repealed certain discriminatory legislation[24], but it remains unclear what validity is given to decisions and ownership rights granted under the revoked laws. Land market transactions are taking place based on ownership rights granted under legislation that can be considered discriminatory. UNMIK claims a determination will be made on a case-by-case basis, which leaves a potentially high degree of uncertainty in the land market.

- Inheritances have caused problems with the ownership and transfer of property. Many families fail to submit inheritance cases to the court, and even for those families that follow the proper procedures, the court is unable to adjudicate inheritance requests in a timely manner due to the backlog of cases. The implication is that a significant amount of property information is not kept current in the court or cadastre offices, making legal registration and transfer impossible. Below is an example of a typical inheritance problem and the method used by a local attorney to resolve the problem[25].

Case Study #1: Procedure Purchase of a Property in the Village (House with Yard and Agriculture Land)

Description of the case:

Twenty-five years ago, a property in a village was purchased informally by verbal agreement between the buyer and seller. After payment was made, the buyer possessed the property and since that time the property has been used by his family with additional houses being built. Once the buyer took possession of the property, no further formal procedures for concluding the purchase contract or verifying it as required by law were completed. In the mean time, both the buyer and seller have died, leaving heirs. In the local cadastral office, the original seller of the property is recorded as the legal owner. The heirs of the seller initiated the inheritance procedure, including division of the inherited property, and during the court proceeding they have requested to remove the properties that were sold by the devisor. Therefore, the court did not include the subdivision for the property and the heirs did not record the changes in the cadastral records. Thus, the devisor remains the legal owner of the property.

[24] Regulation 1999/10.

[25] These case studies were prepared by Betim Shala, an experienced attorney with Chambers in Pristina.

Based on this situation, the heirs and the buyer are in a very difficult position. Both the legal owner and the informal buyer of the property are dead and the inheritance procedure did not include provisions for the property in question.

Possible legal solutions for this case:

First, request from the heirs of the legal owner the inheritance decision issued by the court where the heirs are declared as owners. Based on this decision, the appropriate changes need to be registered in the cadastral office. Then the new owners (the heirs) could conclude a new sales contract with the informal buyers (possessors).

The procedure:

- Contact the heirs of the seller.
- Get a copy of the inheritance decision.
- Get court-verified authorizations from the heirs of the property to register them as the owners in the cadastral office.
- Obtain the possession list and a copy of plan from the cadastral office.
- Deliver the request for the appropriate change in the cadastral books.
- Obtain the possession list and copy of plan with the name of the new owners.
- Complete a purchase contract for the property between the new owners and the heirs of the buyer.
- Deliver the proposal for sale of the house and yard to the municipality for approval.
- Deliver the proposal for sale of agriculture land to the agriculture cooperative operating in the municipality for approval.
- Receive the approvals for the proposals.
- Verify the purchase contract for the property in the municipal court after which the request for evaluation of the tax on property will be delivered to the municipal tax office.
- After the decision is approved and the tax paid, deliver the copy of the contract, possession list, and the copy of plan for the property to the cadastral office with a request to make the appropriate changes in the cadastral books.
- Finally, obtain the new possession list and copy of plan with the names of the new owners.

Expenses for this procedure:

- Photocopy of the decision of the court and verification of the copies.....€3.00
- Copy of the possession list and copy of plan €10.00
- Verification of the authorization (for each authorization) .....€5.00 each
- The request for changes in the cadastral books €20.00
- Copy of the possession list/ plan with the names of the new owners €10.00

- The approval that the municipality and cooperative are not interested to buy the property..... €10.00-30.00
- Verification of the purchase contract €50.00-100.00
- Payment for the tax on property.....€150.00/unit
- The request for changes in the cadastral €20.00
- Obtain copy of the possession list and copy of plan with the names of the new owners €10.00

3.2 Apartments

Apartments are a unique category of property in Kosovo. Whereas in most former socialist countries where privatization and registration of apartments is relatively easy, rights to apartments and the privatization process in Kosovo have some unique characteristics.

First, according to former Yugoslav law, residential buildings with more than two apartments are considered to be in social ownership and could not be privately owned. However, most apartments in residential houses were privatized during the 1990s according to a 1992 Serb law. The HPD is adjudicating claims for apartments that were lost or not privatized to Albanians under the discriminatory Serbian legislation, but few of the claims are succeeding because it is hard to pass the threshold of being an owner of the property before it is taken away. There is a problem with the mechanism to privatize SOE apartments after the enterprise is privatized or when the enterprise is defunct. When the KTA privatizes an enterprise without the apartments or when an enterprise is defunct there is no way to privatize the remaining apartments, resulting in a legal limbo for possessors who wish to purchase the socially owned apartment they occupy.

Second, there is a problem with the management structures for common areas. A lack of a clearly defined set of substantive and procedural legislation regulating co-ownership rights and obligations causes property disputes, especially over general maintenance issues. Hopefully the issue will be clarified in the Civil Code provisions on condominium law.

Third, apartments and other vertical properties are generally not recorded in the cadastral change books. The USAID assessment team found an exception to this in Peje and Gjakova where the MCO offices have begun to incorporate apartments into the cadastral records. As a result, these apartments can now be used as collateral.

Case Study 2: Procedure for an Apartment Transaction

For the sale of an apartment the following documents are required:

- Sales contract of the apartment signed between the former owner of the apartment as social property and the usage right holder of the apartment, certified by the competent municipal court;
- Contract on using of the apartment signed between the usage right holder of the apartment and the *Bashkesia Veteqeverisese e Interesit* (Self-governing Community of Interests, BVI) for apartments;
- Decision on the apartment allocation issued by the apartment allocation right holder;
- By means of these documents, refer to the municipality for their "right of first refusal," (the municipality usually is not interested in buying the apartment);
- Together with the approval issued by the municipality, the contract, and the original contract of the apartment sale signed between the buyer and the owner of the apartment on social property, the sales contract is validated in the competent municipal court;
- After the contract is validated, the tax for the property transaction is paid and the purchase is concluded.

Possible obstacles:

- The owner has died and the inheritors have not initiated the inheritance procedure.
- The owner has died and the inheritors have not initiated the inheritance procedure nor do they want to conduct the procedure (this is important when the buying and selling of property has been done but the contract has not been validated).
- One of the inheritors sells the property without the permission of the others and the inheritance procedure has not been conducted.
- The inheritance procedure has been conducted but the initiator has not presented all legal inheritors and after that he sells the property.
- The buyer does not possess the original contract for the transaction of the apartment concluded between the residence right holder and the owner of the apartments as social property.
- The buyer has the validated contract that was concluded with the owner of the apartment on social property, but the contract was validated between 24 March 1999 and 30 June 1999 by the municipal court in Pristina, which is now dislocated in Nish-Serbia. The municipal court in Pristina does not accept these contracts.
- The buyer possesses the receipt of payment for the contract price, but the owner of the social property did not conclude the transaction contract.

Expenses for this procedure:

- Obtaining the approval, photocopying the documents, and validating the photocopies.....€10.00
- Paying the court tax for contract validation.....€50.00-100.00

- Paying the tax on transaction in the municipality of Pristina €100.00/unit

3.3 Non-Private Property

As stated in more detail in Section 3.3 and Section 9.0 on non-private ownership, referred to as social ownership, such terms are ambiguous. Social ownership encompasses enterprise property as well as what other countries call public/state property. Public/State property is property that the government uses for its core functions, such as ministry or municipal buildings as well as property that serves for the greater public good such as infrastructure, cultural property, and airfields. Under current legislation, there is no clear definition of what property is public or private and who acts as the administrator for it. There is inconsistency among the municipalities as to maintenance and rent collection on socially owned property. In Pristina, the municipality has said that they are not collecting rent, but in Suha Reka, the municipality is collecting rent for four apartments. It is also not clear where the rent money is going once it has been collected. There have been accusations that rent money is siphoned off into personal bank accounts.

The problem with non-private property is further complicated by municipal claims to socially owned property and the competing privatization strategies of the municipalities and the KTA. See Section 9.0 of this assessment report for a more detailed discussion.

3.4 Illegal Construction

Relevant laws and their implementation in the field of construction including the period not only after 1999, but also during the former Yugoslav regime, have allowed the development of illegal, unauthorized constructions. The MESP estimates that there are approximately 30,000 houses which have been built in recent years, but whose situations are illegal.

This phenomenon causes problems of environmental pollution and threats to public health due to the lack of potable water and the lack of adequate sewage treatments, as well as the lack of health clinics.

More generally, such settlements often lack adequate police protection and local government presence, producing a generalized lack of the rule of law. The future opportunities of children in many such settlements are threatened by the lack of schools.

Such settlements also present threats to public safety in instances where the construction materials and techniques are substandard, producing elevated risks of collapse or rapid deterioration. These types of settlements also frequently lack adequate access roads, making fire fighting and ambulance services problematic.

The first question is how to inhibit such settlements in the future through the application of zoning and construction laws and regulations. The concerns of the MAFRD often conflict with those of the MESP, but in this case there is a mutual concern for the planned expansion of urban areas and the preservation of productive agricultural land as part of this planned expansion. The publicly stated land administration policies of these two ministries[26] lay the basis for an important collaboration to deal with illegal construction. Such collaboration, however, will need to be cemented legally and administratively in laws and regulations for guiding land use in and around cities.

The second question is how to meet the demand for affordable housing in an organized and fair way to forestall informal settlements. Many municipalities—particularly Pristina, Peja and Prizren—are preparing new strategic plans for guiding private and public investments in housing and other construction activities. These plans are supposed to be developed in coordination with initiatives being undertaken by municipalities under the new Law for Spatial Planning.

The third question is how to "regularize" qualified informal settlements, under what conditions informal settlements should be removed, and how to do it. It is useful to identify the main types of illegal construction in order to devise a strategy for regularizing them.

Illegal Construction Type 1: Land occupied without legal possession documentation or buildings constructed without building permits

- Sub-type 1.1: Located within urban area

  Approach to legalization: There is a need for special legislation to define procedures to deal with the variety of land possession without valid documentation. Once the land possession issue is settled, then conditions under which the building construction without permit can be either legalized (such as payment of a fine and payment into a fund for installing infrastructure) or demolished. The latter solution seems very unlikely.

- Sub-type 1.2: Located in rural area

  Approach to legalization: Like Sub-type 1.1, special legislation is needed to define procedures for regularizing the tenure status of the land. Since the land in this sub-type of illegal construction is outside of the urban planned area, some

[26] See the presentations of the Ministry of Agriculture, Forestry, and Rural Development and the Ministry of Environment and Spatial Planning at the November 2002 Seminar on Land Administration organized by the KCA, available on the CD "Land Administration Policy for Kosovo," prepared by the Kosovo Cadastral Agency, Pristina, 2003.

special legislation or sub-legal acts will be needed to guide municipalities in their decisions about how to either regularize these constructions or demolish them. The latter solution seems very unlikely.

Illegal Construction Type 2: Land acquired legally, but lacking documents (including a building permit)

Legal and sub-legal acts are needed to define the conditions under which a legal possessor of the land (who once had legally valid documentation) can reconstruct this documentation, including that in the MCO, and can remedy the lack of a building permit can be either legalized (such as payment of a fine and payment into a fund for installing infrastructure) or demolished. The latter solution seems very unlikely.

The status of the thinking in the MESP concerning these issues is summarized in the following draft legislation describing how the illegal housing problem should be handled:

> The Ministry of Environment and Spatial Planning sees the need for a new law to deal with the large number of illegal constructions that dot the Kosovo landscape.
>
> #### Rationale for the law
>
> The approach to regularize illegal constructions will be based on experiences in this field in neighboring regions facing the same problems, on EU legislation based on democratic principles, balancing private and public interests, and on internationally recognized human rights.
>
> The drafting process for a Law on Construction regulating future constructions is in its final stage before providing the draft law to the Office of the Prime Minister. However, to successfully solve the specific problems caused by existing illegal constructions, a separate Law on Regularizing Illegal Constrictions has to be issued.
>
> Therefore, the purpose of the Law on Regularizing Illegal Constructions, is to harmonize and balance public and private interests in Kosovo, to improve the quality of urban life and the environment, ensuring quality of constructions and infrastructure connections, supporting economic development and investments in Kosovo.
>
> #### How the law will address perceived problems
>
> The initial Ministry of Environment and Spatial Planning approach to the problem of illegal constructions is to move toward demolition, but grant exemptions under certain conditions.
>
> The Law will include the areas of legal appeals aimed at preventing planned demolitions and legal procedures seeking compensation following an illegal demolition. The law will address the problem of lack of documentation.
>
> The law will address the issue of illegal constructions from different perspectives including: spatial planning, specific location conditions, construction standards, private sector development and human rights.

The law will ensure transparency in balancing the public and private interests, taking into account good governance principles such as non-discrimination, equality and accountability. A functioning judiciary is necessary to ensure due process safeguards.

Only effective participation and representation of all stakeholders and commitment of civil society at large may result in sustainable solutions. Therefore, during and after the drafting process of the law itself, promoting public awareness and good governance on local level will be an important part of the success of the law.

Draft framework of the law indicating its different parts

The law will be harmonized with the promulgated Law on Spatial Planning, UNMIK Regulation No. 2003/30 of 10 September 2003 and with the draft Law on Construction.

1. Definitions (including the definition of illegal construction and the definition of regularization)
2. Categorizing illegal constructions
3. Categorizing zones
4. Definition of valid documentation
5. Procedures regarding regularization
6. Criteria and conditions regarding regularization
7. Procedures regarding demolition and partial demolition
8. Criteria and conditions regarding demolition and partial demolition
9. Exceptions
10. Institutional responsibility of central and local level
11. Delegation of responsibilities
12. Implementation
13. Supervision
14. Taxes and fees in accordance with the to be regularized construction
15. Penalties and fines
16. Right to appeal
17. Access to information
18. Special provisions
19. Enter into force

This draft also identifies weaknesses in the UNMIK legal framework and its implementation, which are making the control and regularization of illegal construction difficult. At present, construction in Kosovo is regulated according the applicable laws of the Provincial Level of the former Socialist Autonomous Province of Kosovo (SAPK) and of the Federal Level as listed in the Official List of the Social Federal Republic of Yugoslavia (SFRY) as well as UNMIK regulations.

UNMIK Regulation 2000/45, Section 3, Article 3.1 (b, c, d, e, and k) states that within its territory, each municipality shall be responsible for urban and rural planning and land use, licensing of building and other development, local environmental protection, implementation of building regulations and building control standards, social services, and housing.

Under the guidance of UNMIK Regulation 2000/53 on building construction in Kosovo (also known as the "Rexhep Luci Regulation on Construction"), in particular Article 2.2, municipal authorities are obliged "to issue instructions for the application for and issuance of construction permits." In Section 7 of the regulation, it states that nothing in that regulation "shall in any way limit or restrict the authority of the

municipality to take such action as is necessary, including the demolition of a building or structure." However, not all municipalities have issued these instructions, and hardly any municipalities have enforced them.

The same regulations also states in Article 2.3 that criteria for granting exemptions from the requirements for the application for and issuance of construction permits, and (in Article 4.2) that criteria and related sanctions regarding the legalization of constructions that had commenced after 10 June 1999, shall be provided in an administrative direction issued by the SRSG. However, these directions have not been issued by the SRSG to date, leaving existing illegal construction unregulated.

3.5 Housing and the Return of Displaced People

Due to the scale of problems with residential property in Kosovo in 1999 as people moved from place to place and as the conflicts mounted, a crisis of housing and resettlement became apparent. There were thousands of houses and apartments destroyed during the 1999 conflict and during subsequent, more localized conflicts. Rebuilding those housing units has been a main preoccupation of the citizens of Kosovo. Another critical issue is the illegal occupation of residential property that was vacated when people sought refuge in neighboring towns or abroad. To address these issues, UNMIK created the Housing and Property Directorate (HPD) for processing claims of discrimination and coerced loss of housing, and the Housing and Property Claims Commission (HPCC) for adjudicating claims to lost housing.

3.5.1 Legal Framework

In 1999, the SRSG established HPD and HPCC with UNMIK Regulation 1999/23[27]. In October 2000, the SRSG promulgated UNMIK Regulation 2000/60 on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission.

HPCC has been given exclusive jurisdiction to adjudicate three distinct categories of residential property claims:

A. Claims by individuals who lost property rights to residences as a result of discriminatory laws after 23 March1989. Category A claims intend to remedy the lost property rights in the period after the autonomous status of Kosovo was withdrawn.

B. Claims by individuals who entered into informal transactions after 23 March 1989. Category B claims are intended to legalize informal property transfers, and the clarification of such claims is potentially also a step to restore the property

[27] On the Establishment of the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC), 15 November 1999.

registration system. According to pre-1999 law, transactions between Albanians and Serbs were disallowed, as of course were informal transfers. However, if the sale could have been formalized under the law at the time, a Category B claim would not be within the jurisdiction of the HPD. The HPD only formalizes those sales that were illegal at the time because they involved inter-ethnic transfers.

C. Claims by individuals who were the owners, possessors, or occupancy right holders of residential real property prior to 24 March 1999 and have been deprived of their right to enjoy possession and have not voluntarily transferred the property right. Category C claims are intended to remedy the interference in refugees' and internally displaced persons' property rights by illegal occupancy.

The decisions of the HPCC are binding and enforceable and may not be subject to judicial review. Cases that do not meet the requirements in categories A, B, and C fall under the jurisdiction of the regular courts. The deadline for submission of claims to HPCC through HPD was extended by the SRSG to 1 July 2003, and there have been no further extensions of that date.

3.5.2 Claims

The period for filing claims ended on 1 July 2003. The status of claims and their processing is shown in Table 2 and Table 3.

As shown in Table 2, as of 1 July 2003 there have been 28,832 claims lodged with the HPD. In the six months following the closing date for the presentation of claims (i.e., as of December 2003), a total of 42.2% of the claims have been resolved either by HPD decision (13.4%) or by the decision of the Claims Commission (28.8%). While the initial resolution of claims may have dealt with the simplest to resolve, this progress has been substantial, especially in the Pristina and Mitrovica regions. Much slower resolution has occurred in the Peja and Gjilan Regions (less than 20% of the claims).

Approximately 2/3 of claimants live in Serbia and Montenegro. The HPD maintains a full office in Belgrade and a field office in Podgoriça. The HPD has complete access to government administered document archives in Serbia and Montenegro, including records carried off to Serbia by the Yugoslav Army when it retreated. The Serb officials do not ask the HPD for ethnicity of claimant, even if it is a Category A claim.

Table 2: Properties Claimed under HPD (as of 1 July 2003)

Category	Pristina Region	%	Peja Region	%	Prizren Region	%	Mitrovica Region	%	Gjilan Region	%	Total	%
A	588		85		89		195		90		1047	3.6
B	618		52		21		62		48		801	2.8
C	8,288		7,887		3,733		3,505		3,571		26984	93.6
Total Claimed	9494	32.9	8024	28.0	3843	13.0	3762	13.0	3709	13.0	28832	100.0

Table 3: Claims Resolved by HPD and HPCC (as of 12 December 2003)

Deciding Agency	Pristina Region	%	Peja Region	%	Prizren Region	%	Mitrovica Region	%	Gjilan Region	%	Total	%
HPD Decision (31.83%)	1,751	18.4	855	10.7	325	8.5	631	16.8	314	8.5	3,876	13.4
HPCC Decision (68.17%)	3,617	38.1	1,378	17.2	1,052	27.4	1,555	41.3	700	18.9	8,302	28.8
Total Resolved	5,368	56.5	2,233	27.9	1,377	35.9	2,186	58.1	1,014	27.4	12,178	42.2

Source: HPD Statistics, 20 February 2004.

The HPD is the only UNMIK agency working effectively both in southern and northern Mitrovica. It has an office located on the dividing line with two entrances, one on the north and one on the south. A large number of Serbian claimants living in the north with claims in the south have been selling rather than attempting to return. Not many Albanian claimants for properties in the north have sold, but rather have asked the HPD to administer their properties.

A difficult type of case for the HPD is instances of the SOEs, where the enterprise built apartments for its employees and administered their allocation to employees. In the 1990s, people were entitled to purchase housing assigned to them by the company. There were many instances where companies started proceedings to arrange allocations of apartments to Albanian employees, but dismissed the employees and reassigned the apartments to Serbs, all apparently according to law and without discrimination. In practice, the majority of allocations of housing units by the SOEs in the 1990s went to Serbs. To detect and prove discrimination in strict legal terms in most of these cases is very difficult because these are cases where the Albanian was discriminated against *before* acquiring a property right. In such cases where the Albanian claims the apartment, the UNMIK regulation obliges the HPD to dismiss the claim because, despite the discrimination, the claimant did not lose a property right and therefore no property right can be restored. However, the claimant did lose something (basically, the right to have a future right) as a result of discrimination. A recommendation has been forwarded to UNMIK that such claimants be eligible for fixed-amount compensation (less than the compensation they would get if they had lost the right, but more than the zero compensation they get under existing regulations).

A majority of Serb workers with apartments who were in Kosovo as part of the Serbanization of Kosovo had not purchased their apartments, and may not have filed a claim. However, such apartments may be illegally occupied, so the company cannot today give the property to its workers. Finding equitable formulas for the variety of circumstances of discrimination and at the same time apparently legal transactions is extremely frustrating.

The HPD's experience with processing claims might prove of benefit to the courts in their future consideration of property conflicts. Their approach is somewhat similar to class action cases in the U.S. The legal staff group similar claims, and the Claims Commission considers one case from the same class of claims. Its decision and reasoning can then be treated as setting a precedent, and the other cases in the class can be rapidly processed.

Another technique is for experienced staff to examine a displaced person's documents and identify likely forgeries, such as purchases by now-displaced persons in 1997 when there was a massive purge of Albanians from the center of Pristina. When documents are detected as likely forgeries, those cases can be put aside

pending further verification, rather than forwarding the claim to the commission immediately.

3.5.3 Administration

HPD is mandated to supervise the temporary utilization or rental of abandoned housing for humanitarian purposes[28]. HPD's rules of procedure regulate the administration and allocation of property on a temporary basis to refugees and internally displaced persons. Once the property is placed under its administration, HPD has broad powers to evict illegal occupants and allocate property to those that qualify on the basis of humanitarian need. The criteria for determining who qualifies for allocation is not stipulated in HPD's rules of procedure, but in internal HPD documents. HPD can therefore decide, without any other administrative or judicial review, who is an illegal occupant and who merits a humanitarian permit[29].

As of 11 March 2003, HPD had investigated 4,345 cases of abandonment, of which 2,325 were brought under its administration. A total of 806 HPD administered units have been allocated on the basis of a temporary permit issued by HPD. The majority of such permits have been granted to both current occupants and vulnerable parties on the grounds of lack of financial resources and lack of access to accommodation, in accordance with HPD's internal procedural rules. HPD has reported that applicants who meet all the criteria except the access to sufficient financial resources would be eligible for a temporary permit on a rental basis.

Following notification of residences known to be abandoned or illegally occupied, the present occupants can come forward with documents to show they have the right to live there permanently. If they cannot prove a legitimate right of occupation within 30 days, HPD can take the property under its administration.

A major problem with implementing evictions or pressuring illegal occupants to leave the property is that the legal occupants in many cases were not ready or willing to return and take possession. As a result, properties were left empty and often looted. The present policy is that in instances where the claimants ask the HPD to administer a property, HPD attempts to find a temporary occupant. To protect against

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[28] Section 1.1, UNMIK Regulation 1999/23. Section 1, UNMIK Regulation 2000/60 defines abandoned housing as "any property, which the owner or lawful possessor and the members of his/her family household have permanently or temporarily, other than for an occasional absence, ceased to use and which is either vacant or illegally occupied."

[29] The HPD's internal allocations policy reads: "(1.) Applicants should not have previously refused temporary accommodation without an adequate and acceptable explanation. (2.) Applicants should be at least 16 years of age. (3.) Applicants should not currently have access to permanent or reasonable temporary accommodation. (4.) Applicants should not have access to sufficient financial resources which would enable them to resolve their housing problems in the private market. (5.) Applicants should be able to demonstrate a connection with the local area provided that this does not jeopardize their security."

vandalism, it is better to find a temporary occupant than to leave the property empty. Even the illegal occupant can be allowed to stay.

The HPD terminates the administration of a residence following a request from the claimant. However, the HPD gives notice to the occupant, who has 90 days to vacate or (if still qualified for a humanitarian permit) accept alternative accommodation from the HPD. Only then does the HPD return the keys to the claimant wishing to reoccupy the residence.

More than half the successful claimants give the property to the HPD for administration, rather than take immediate possession.

Properties under administration can be sold, which helps some claimants to get financial compensation for housing to which they have no intention of returning.

The HPD also uses abandoned houses for humanitarian housing. Many people lost their houses to burning, came back in 1999, and found their houses destroyed. They moved into any empty apartment they could find. There are still many people with no money and nowhere to live. The HPD can offer a place to live to people who are subject to an eviction by HPD and have a humanitarian need. A six-month occupancy agreement is arranged, and plans are being made to start renting some housing units under administration.

3.5.4 Other Types of Properties

There is a gap in the protection of internally displaced persons' property rights to agricultural and land to commercial properties. The HDP mandate is restricted to facilitating the recovery of residential properties. The main mechanism for the recovery of lost agricultural land and commercial properties is the court system. People can file claims for the recovery of property to which they have adequately documented rights. Such a route is complicated by the difficulty of access to courts, particularly by Serb claimants, although it appears to be easier to access for other communities. The pressure for recovering agricultural and commercial properties is declining as time passes. Some potential claimants have arranged for the sale of their properties. Some claimants decide that due to their recent arrivals in the 1990s, they have no strong links to the communities where their former properties are located and arrange for the sale of properties or simply abandon claims[30].

Several issues are being discussed concerning the HPD:

1. Who will administer properties when HPD ends?

[30] See Carol Rabenhorst *et al*, "I was born in that Village; Prospects for Minority Returns and Sustainable Integrated Communities in Kosovo," Urban Institute, June 2003, pages 28-29.

The HPD is developing a hand-over strategy. Most properties will probably come under the municipalities, but with checks to prevent potential abuses - specifically, once a rental scheme is in place, the administration of presently HPD administered properties will be run by an independent company based on transparent criteria which will resist political interference. As for unclaimed properties under administration, these can be handed back to the owners (such as SOEs) or municipalities for social uses.

2. How should HPCC decisions be recorded in the MCOs and municipal courts?

HPCC decisions are not sent to the MCOs to be recorded in the MCO cadastral change books, even for houses on parcels of land which do have entries in these change books. As far as apartment-housing units, in most cases the MCOs have not developed procedures for recording property information for such "non-land" properties. As for the courts, an HPCC decision is legally binding evidence, resolving matters outside HPD/HPCC jurisdiction. The HPD/HPCC does not record anything formally with the courts, but expect that the courts will be able to have the capacity to receive their records when they close. This lack of connection between the important work done by the HPD/HPCC and the MCOs and courts may cause serious problems in the future.

Claims (or parts of claims) dismissed by the HPCC because they are outside HPCC jurisdiction are referred to the courts along with the HPD file.

4.0 Municipal Courts

The following section is based on the OSCE report regarding the municipal courts in Kosovo[31]. The excerpt has been modified with additional information and to reflect new findings.

4.1 Organization and Competencies of the Municipal Courts

As with other areas and institutions that affect property and property rights, the municipal court system in Kosovo is regulated by a series of Yugoslav and UNMIK laws and regulations. In 1999 after the conflict, the civil courts were gradually reopened at the municipal, regional, and Supreme Court level. Municipal courts in Kosovo have jurisdiction over two categories of cases with regard to property rights:

- "undisputed cases," meaning the verification and recording of transfers of property rights; and
- "disputed cases," meaning the resolution of property disputes.

The court is responsible to verify and record contracts that transfer property rights based on the main provisions in the Yugoslav Law on Transfer of Real Property[32]. Parties to a sale present the transfer contract along with other necessary supporting documentation to the court in order to verify the will and identity of the parties. In essence, the court performs the function of a notary as found in many other civil code countries. The judge does not make a determination on the legality of the support documents or transfer; rather he or she simply verifies the identity of the party and records the transfer. UNMIK Regulation 2001/17 on the Registration of Contracts of Sale of Real Property in Specific Geographical Areas of Kosovo modifies the procedure for sales of residential property within specific geographical areas and requires prior approval of the UN Municipal Administrator. Specifically, UNMIK Regulation 2001/17 Section 4 states:

> A competent court in the area where the residential property is located shall only verify a contract for the sale of the property in accordance with the applicable law where proof of registration by the Municipal Administrator pursuant to section 2.7 is provided...

Although the goal of the provision is to protect distress sales and security of ethnic minorities, it has been argued that the UNMIK's interventions in sales in specific geographical areas are well intentioned but not very effective, and only serve to increase the transaction costs and drive the transactions underground.

[31] OSCE Property Rights in Kosovo 2002-2003, Part III, Chapter 3, pages 25-36.
[32] Official Gazette SAPK, No. 45/81 and No. 29/86.

The jurisdiction of the court regarding property disputes is set forth primarily in applicable SFRY law, including the Law on Regular Courts[33], the Code of Civil Procedures[34], and the Law on Execution of Decisions[35]. UNMIK regulations have modified the competency of the courts for some property matters. For example, UNMIK Regulation 1999/23 has transferred claims regarding certain categories of residential property rights to the HPD. Section 1.2 states:

> As an exception to the jurisdiction of the local courts, the Directorate shall receive and register the following categories of claims concerning residential property including associated property:
>
> - Claims by natural persons whose ownership, possession, or occupancy rights to residential real property have been revoked subsequent to 23 March 1989 on the basis of legislation which is discriminatory in its application or intent;
> - Claims by natural persons who entered into informal transactions of residential real property on the basis of the free will of the parties subsequent to 23 March 1989;
> - Claims by natural persons who were the owners, possessors, or occupancy right holders of residential real property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily been transferred.
>
> The Directorate shall refer these claims to the Housing and Property Claims Commission for resolution or, if appropriate, seek to mediate such disputes and, if not successful, refer them to the Housing and Property Claims Commission for resolution...

Initially there was confusion among judges about the transfer of jurisdiction to the HPD as well as difficulty with the slow pace of HPD resolution of claims. However, the change in jurisdiction is now basically understood and the HPD is clearing its caseload. There is another problem that relates to the scope of the HPD mandate: the HPD only adjudicates claims for residential property. Agricultural and commercial properties are not covered under the HPD mandate and, presumably, claims are to be filed and adjudicated in the regular courts. However, there is no legislation to provide guidance on how judges are to resolve these claims resulting in inconsistent decisions throughout Kosovo. The procedures developed and tested by the HPCC for handling the claims for residential properties, however, could and probably should be studied and adapted for use by the courts for claims to other types of property.

UNMIK Regulation 2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters also transfers the jurisdiction from the regular courts to this "special chamber." Under the regulation, a

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[33] Official Gazette SAPK, No. 21/78.
[34] Official Gazette SFRY, Nos. 4/77-1478, 36/80-1182, 69/82-1596.
[35] Official Gazette SFRY, Nos. 20/78, 6/82, 74/87, 57/89.

special chamber of the Supreme Court is created and has the primary jurisdiction to adjudicate claims the following claims:

> Section 4: Jurisdiction
>
> 4.1 The Special Chamber shall have primary jurisdiction for claims or counterclaims in relation to the following:
>
> a) Challenges to decisions or other actions of the Agency undertaken pursuant to Regulation No. 2002/12, including the imposition of fines as provided for in section 27 of Regulation No. 2002/12;
>
> b) Claims against the Agency for financial losses resulting from decisions or actions undertaken pursuant to its role as an administrator of an Enterprise or Corporation;
>
> c) Claims, including creditor or ownership claims, brought against an Enterprise or Corporation currently or formerly under the administrative authority of the Agency, where such claims arose during or prior to the time that such Enterprise or Corporation is or was subject to the administrative authority of the Agency;
>
> d) Claims involving recognition of a right, title or interest in property in the possession or control of an Enterprise or Corporation currently or formerly under the administrative authority of the Agency, where such claims arose during or prior to the time that such Enterprise or Corporation is or was subject to the administrative authority of the Agency;
>
> e) Enforcement, upon application of the Agency, of the powers of the Agency exercised pursuant to Regulation No. 2002/12;
>
> f) Claims for rescission of transactions of a Socially-owned Enterprise undergoing a liquidation proceeding, as provided for in section 9.4 of Regulation No. 2002/12; and
>
> g) Such other matters as may be assigned by law...

The Special Chamber is currently functioning and has cases pending before it. Considering the contentious issue of KTA privatizations, the number of cases before the court will likely increase, especially as municipalities attempt to assert control over socially owned land within their territory for various public uses.

4.2 Court Resources and Constraints

Although the legal framework for jurisdiction and procedures is generally thought to be adequate with regard to adjudicating property claims and disputes, the implementation of the legal framework is problematic. On the positive side, most municipal courts are now housed in new offices and all have access to computers. Judges and staff have been trained in some legal procedures. Court presidents are concerned about the lack of a coherent and available compendium of applicable law, particularly concerning property rights. They are also concerned about the low number of judges. In the municipal court of Pristina, for example, under the pre-1989 regime, there were around 120,000 inhabitants of the municipality and 35

judges at the municipal court handled the work generated by that population of people. Today there is a population of over 500,000 and only 26 judges in the municipal court. The ratio of population to judge has increased almost five-fold from 4,286 people per judge prior to 1989 to 19,231 presently. Court structures are incomplete, resources are inadequate, and there are cases when the courts have had to postpone their consideration, such as for inheritance cases and other non-contested property related cases in Pristina, in order to deal with the higher priority criminal and civil conflict cases.

In order to implement the legal framework from a practical perspective, resources—including copies of the laws themselves, appropriate structures or institutions, and other human and physical resources must be available to the courts. These resources should also be managed appropriately in order to apply the laws in a timely manner and to property protect rights. The following is a list of issues that effect efficient court administration and resolution of property disputes.

4.2.1 Insufficient Access to Laws

Immediate access to laws and regulations in effect is the most basic and fundamental requirement for a court to adjudicate property claims. The OSCE report noted that the timely delivery of official and translated newly promulgated laws to the courts has been a persistent problem and threatens the protection and promotion of property, due process, and other rights. If the courts are not made aware of new UNMIK regulations, they cannot apply or respect them properly. Without translation, dissemination, and training on new regulations it is difficult to guarantee consistent application and ensure that property rights are respected.

Groups such as the Kosovo Law Center and the American Bar Association/ Central and East European Law Initiative have attempted to address this problem by publishing and distributing laws. However, it was noted that the UNMIK legal office recently claimed copyright privileges to their regulations and has not yet given permission for the new legal update to be published. Due to the many diverse sets of laws and regulations affecting property rights, a comprehensive compilation of property related legislation should be assembled and distributed to judges and legal professional. A single reference book related to property legislation would be an extremely effective tool. It is important to note that USAID has existing projects that could undertake the compilation and distribution process. Judicial training on the laws would further enhance the understanding and effectiveness of current legislation.

4.2.2 Archives

Many municipal court archives are in terrible shape (see next page for photo). Although the courts have attempted to record and file post-1999 files in an orderly manner, the court archives that existed prior to 1999 are generally in a state of

complete disarray and risk being damaged or lost. The Pristina Municipal Court pre-1999 archives are located in the basement of the jail in plastic garbage bags and boxes. Piles of documents are strewn about the floor and damage is occurring from leaking pipes and rodents. It is absolutely impossible to locate property records in the current state. The USAID Rule of Law project is in the process of developing procedures to organize the court archives, which should help locate property records once the process is complete. It would be possible to help the future property registration process by developing a database for property records that contains details of records that can be easily transferred once registration under the new system starts. Since the USAID project is in the process of developing the methodology for purging certain archived documents and recording others, it is recommended that property documents receive special treatment as the identification and organization process proceeds.

An example of municipal court archives.

4.2.3 Missing and Parallel Structures

Another key element for the effective operation of the courts and protection of property rights is the functioning of the structures as mandated by law. The federal court no longer has effective access to (or possibly territorial jurisdiction over) legal matters in Kosovo[36]. There is no UNMIK regulation or administrative directive that clarifies the competencies, if any, of the federal court and whether the Supreme Court of Kosovo is the officially designated alternative. Since the competencies of the Supreme Court of Kosovo have not been clarified, it is not clear whether the Supreme Court has jurisdiction over certain property-related cases.

The issue of parallel courts is also problematic. The OSCE report noted the existence of Serb-run courts operating in the regions of Mitrovicë/Mitrovica, Leposavic/Leposaviq, Zubin Potok, and Zvecan/Zveçan. It also documented the existence of Serbian courts outside the territory of Kosovo, which claim jurisdiction over Kosovo.

[36] Section 1.1, UNMIK Regulation 1999/1 as amended by UNMIK Regulation 2000/54 gives UNMIK authority over the administration of justice in Kosovo.

UNMIK has been attempting to dismantle the parallel courts through the opening of UNMIK courts in the northern municipalities. The USAID assessment team visited the municipalities of Leposavic/Leposaviq and Zvecan/Zveçan on 10 February 2004 and found that the parallel courts still exist, even though the newly established UNMIK courts are operational. In discussions with the president of the UNMIK court, property cases were identified as one of the types of cases most citizens choose to take to the parallel court. The president estimated that 90% of property transactions and disputes are submitted to parallel courts. In 2003, only four contracts were registered in the UNMIK court, and these were likely done by buyers who chose to use both courts rather than just one.

The existence of the parallel courts poses many risks with regard to property rights and transactions. For example, a property owner could sell his property twice by separately recording sales contracts in both courts. The problem is exacerbated by the fact that the cadastral office refuses to register any decisions from either court until the there is a final decision on which court has jurisdiction over property matters. Although the cadastral office is keeping a copy of decisions and documents related to property submitted from both courts, the managers are unwilling at this time to accept UNMIK's judicial authority over property matters, and are not sure about how to handle the recordings done at the parallel court.

4.2.4 Resource Problems and the Backlog of the Court Case Load

Human and physical resources are both insufficient and not managed in such a way as to provide adequate protection of due process and remedies that are related to property rights. Almost every municipal and district court has complained that a lack of staff hinders its ability to adjudicate civil and property disputes in a timely manner. As noted above in the case of the Pristina Municipal Court, many cases that affect property rights, such as inheritances, are not being adjudicated because they have a lower priority than criminal and other civil cases. The backlog of inheritance cases means that the people in possession of real property, agreed to by the family, do not have legal documentation of their possession. Without such documentation, investment may be constrained, and certainly the operations of the land markets will be affected negatively.

5.0 Gaps in Property Legislation

The following is a list of areas where there are gaps in property legislation. The list is by no means exhaustive, but the problems were identified throughout the course of the USAID assessment team's work.

5.1 Conditions to Transfer Possession into Ownership

Although the Civil Code will likely recognize full ownership rights, the methods and procedures for transferring possession rights into ownership will need to be clarified in a separate law. The law will have to take into account the current provisions of the new Law on Immovable Property Registration and the Cadastral Law, once it has been promulgated by UNMIK.

5.2 Clarification on Non-private Ownership

The Civil Code will recognize two types of ownership (public and private). The types of property that will be transferred into public ownership, the delegated administrative authority, and the rights they have *vis à vis* the property will need to be set forth in a separate law. In addition, the methods for registration, taking into account the new Law on Immovable Property Registration and the Cadastral Law, once it has been promulgated by UNMIK, will need to be included.

5.3 Procedure for Judges to Recognize Ownership Claims

The KTA and HPD share jurisdiction with the courts over certain types of property, and they have clearly defined rules for procedures and processing claims. The municipal courts suffer from a lack of such clear guidelines, and as a result inconsistent decisions are being made. A clear procedure for recognizing ownership claims, especially for commercial and agricultural property, needs to be developed.

5.4 Privatization of Socially Owned Apartments

The privatization of apartments has been ongoing, and the majority is now in private ownership. However, there are some apartments that are caught in a legal limbo and cannot be privatized. Possessors of apartments under SOEs that have been privatized or are now defunct have no mechanism to purchase the property. A clear mechanism and a consistent valuation methodology will encourage the possessors to privatize.

5.5 Regulation of Illegal Buildings and Informal Settlements

Due to the sensitive political and social nature of regulating illegal buildings and informal settlements and the diverse typologies of landholdings with regard to each category, a detailed law and set of procedures for determining how to address each situation is needed. Details such as whether to demolish or regularize a building, how to prove possession claims in the absence of documents, how to provide funds for upgrading infrastructure, and whether and how to transfer a property into full ownership must be carefully discussed, debated, and formalized into legislation.

5.6 Restitution

The issue of restitution and compensation of property unjustly expropriated under the former regime must be regulated once a clear policy decision has been made. There is currently no clear proposal for initiating a restitution and compensation program, but general statements in support of some kind of restitution were made by municipal and Ministry of Agriculture officials. Identifying the date to use as a basis, the required proof, and procedures for submitting and adjudicating claims must be clearly identified. Even if UNMIK and the PISG choose not to initiate a restitution program, there should be clear legislation stating this fact.

5.7 Returns

Although a guideline for housing reconstruction exists, it is not a legislative mandate and there are indications that the procedures have not been applied. Provisions dealing with such issues as assigning temporary and permanent housing, expropriation procedures, and protection of property need to be drafted and enforced.

6.0 Land Tenure Patterns/Property Issues in Agriculture

6.1 Small Farmer Tenure Situation

Most production comes from small private farmers. Private farmers hold 91% of cultivated land, 71% of the agricultural land (including pastures), almost all the cattle (but only 29% of the pasture), and 38% of the forestland in Kosovo (see Table 4 below). Holdings average 2.4 hectares (ha) and are composed of between six to eight parcels, often of different types of land used for growing different crops. Individual farm sizes vary widely from one to 25 hectares; 80% of the farms are in the 0.5 to 2.0 ha range and account for 86% of private holdings. 90% of all farming units have less than 2.5 ha. Private farmers also control 38% of forestland. Kosovo's rural economy can fairly be characterized as being dominated by small private farmers who are responsible for most of Kosovo's production of food, vegetables, milk, and other livestock products.

Despite small average size, farms normally include a broad range of different crops grown on different types of land. Private farmers have just over half the vineyard land (4,400 ha, or 51%). Small farmers are also responsible for nearly all vegetable production, including greenhouse production, which is growing rapidly. Private farmers are also beginning to provide feed grains for the Kosovo's rapidly growing poultry sector, with much of this production occurring on previously idle lands rented from SOEs. The cattle population is almost entirely in private hands and has recovered its pre-conflict level (155,000, or an average of one cow per household). Less than 2% of the farms have more than three cows; milk yield is low at 2.7 liters per cow per day.

Table 4: Rural Land Tenure

Hectares	Private Property	% of Total	Socially Owned Property	% of Total	TOTAL HECTARES
Cultivated	361,631	91	37,377	9	**399,008**
Arable	261,045	90	30,407	10	**291,452**
Orchard	10,312	91	1,056	9	**11,368**
Vineyard	4,433	51	4,285	49	**8,718**
Meadow	85,841	98	1,629	2	**87,470**
Pasture	50,874	29	127,435	71	**178,309**
Agricultural	412,505	71	164,812	29	**577,317**
Forest	164,000	38	266,000	62	**430,000**
Rural	576,505	57	430,812	43	**1,007,317**

Source: Federal Republic of Yugoslavia, Official Yearbook, 1997.

The principal tenure problems which small farmers face are related to inheritance issues and to informal, unrecorded transactions, both of which contribute to the failure to have documents showing the land they possess as being in their names. The institutional disorder in the MCOs and courts due to factors discussed in Section

2.0 of this assessment report also contribute to this lack of legal documentation of property rights, a problem common for all possessors of land in Kosovo.

Inheritance issues are responsible for intra-family disputes, particularly among farm families. In most cases, however, small farmers are clear on what land they own or possess, and failure to register the land appears not to be due to internal disputes among inheritors. There is, however, the fact that to verify rights to land at the court, all inheritors must be present in the court on the same day, which may well require family members to coordinate travel plans of people living in Western Europe or even the United States or Canada. There are no consulates of Kosovo who could take depositions.

Failure to register land in a farmer's name makes it difficult to use the value of the land and structures built on it as collateral for loans from financial institutions. Until recently, there has been practically no bank lending for agriculture, but that situation has been changing recently. Farmers can be expected to verify possession of their lands in the courts and cadastral offices with increasing frequency as profitable opportunities emerge within agriculture (e.g., greenhouses, vegetable production, milk production, trout aquaculture, and feed grain production) and as banks begin showing a greater willingness to finance these types of production and to accept agricultural lands as part of the collateral for loans to finance these investments and associated operating costs.

6.2 Fragmentation and Small Holdings

The average number of parcels per private holding varies between four and eight parcels. With average holdings of around 2.5 ha, fragmentation of holdings can present problems for management and for the use of farm equipment and technology on small fields and require more supervision, particularly for reducing losses from theft of high-value crops. One of the farmers interviewed with respect to agriculture in one municipality visited gave a personal example of fragmentation. As one of five sons, he inherited a one-fifth share in a four hectare farm, meaning that each brother had 0.8 ha; however, the farm was originally divided into three parcels; therefore, each brother now has three parcels whose average size is about 0.25 ha.

The statement has been made that "[b]ecause of this land fragmentation, the agricultural sector in Kosovo is mainly subsistence oriented."[37] The causes of the low agricultural production reaching the market are more complex than implied by this statement. With the agricultural SOEs for the most part idle and renting out their land, it is small private farmers that are responsible for most agricultural production in Kosovo. Production on small family farms is low for reasons related to land access (covered in this report) and for other reasons (described briefly here, and described

[37] Benno Arnolli, Mission Report July 6-19, 2003.

in greater detail in the RAISE study[38]). Ways in which private farmers could obtain additional land to increase the profitability of their crop and livestock activities are covered below. Significant amounts of cropland and large areas of pasture are currently lying idle on SOEs and perhaps in other socially owned property. These lands could be made available to enterprising small farmers to increase production, as discussed below.

An International Fertilizer Development Center project is showing farmers how to increase yields in feed grains by adopting proven technologies, although the RAISE study questions the viability of these crops—currently profitable under the protection of a 26.5% tariff—in the face of low international feed grain prices and subsidies to farmers in North America and the EU. Unfortunately, long-term prospects for feed grain production are not good, since "Kosovo has NO comparative advantage in cereal production [and] no economies of scale in production."[39]

If most milk is consumed on-farm, it is largely due to abysmally low milk yield (2.7 liters per cow per day). The RAISE study projected yield increases of 50% per year as part of a strategy supporting production on family farms (three or more cows) rather than large corporate farms[40]. Yield increases to five liters per day nationally are possible, which would exceed family requirements and increase marketed production to cover much of the deficit of 32% of milk consumption which is imported, in large part due to subsidies from the EU and Slovenia.

Small farmers in areas like Prizren are taking advantage of opportunities identified by RAISE in vegetable production and are being financed by banks according to interviews, both in open fields and greenhouses where early production provides farmers with 60% higher prices.[41] On the other hand, greenhouses on large SOEs were observed during fieldwork to be in tatters and apparently abandoned. Potato production is also largely carried out on small farms, and despite impediments to export are selling their production in Montenegro and Albania. Even the largest potato farmer interviewed had a maximum of 50 ha, while most production is on areas of 10 ha or less. Equipment is available in Italy and elsewhere in Europe to increase productivity on small farms responsible for most of Kosovo's production, yet, like inputs (except fertilizer), imports of such equipment are also subject to a 26.5% duty.

Reports like the RAISE study support the argument that products like vegetables, milk, and farm-produced fish where Kosovo has a comparative advantage are being supplied to the domestic and export market largely by small farmers. Documentary

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[38] "Kosovo Agricultural Assessment and Investment Options for Private Sector Led Development," under the Rural and Agricultural Incomes with a Sustainable Environment (RAISE) for USAID/Kosovo by ARD-RAISE Consortium, May 2002.

[39] ARD-RAISE, 2002, Table H-3; capitalization is as presented in the document.

[40] ARD-RAISE, 2002, pp. xvi and 20.

[41] ARD-RAISE, 2002, p. 24.

evidence and direct observation at processing industry and product-market levels show the importance of small farmers to production of these crops.

Fragmentation (the division of land parcels into smaller units as a result of inheritance) is considered to be an issue by MAFRD.[42] MAFRD is planning to produce a draft law prohibiting further division of agricultural holdings. In view of traditional rules regarding inheritance and the value Kosovars put on having a plot of land, it is hard to see this policy being implemented. The ministry would also like to see consolidation of holdings. However, there is no groundswell of support from farmers for consolidation programs; farmers are either not interested or opposed to consolidation through formal programs, fearing land that they will get will be less valuable than land they will have lost. Thus, in view of its limited resources and other pressing demands, MAFRD does not give the issue of land fragmentation a high priority.

Land consolidation has been implemented in Kosovo as part of the establishment of irrigation schemes. It has been implemented in Gjacova, Rahovec, Prizren, Gllogoc, and Vushtrii within the perimeters covered by the Radoniqi and Iber Lepenc irrigation systems. Where the introduction of irrigation vastly increases the productivity and value of land, farmers are more willing to participate in land consolidation schemes in order to obtain the benefits of irrigation. Where new irrigation systems are established or where old ones are rehabilitated, farmers may be willing to reorganize fragmented holdings.

As noted in subsections below, despite farmers' lack of zeal with respect to consolidation, there is considerable interest among better off farmers in acquiring at least user rights to additional land in order to expand their farm enterprises. They are already doing this by renting land from SOEs under seasonal leases in some cases.

Market-led consolidation is the main alternative for physically combining smaller parcels, but the market in agricultural land for agricultural purposes is being distorted by the pressures for non-agricultural uses, leading to prices higher than justified by the potential agricultural production of the land. Also, possessors of agricultural land, seeing this volatility in land prices, are tempted to hold the land for speculative purposes with a view toward selling the land at a large profit sometime in the future, rather than investing time and capital in making the land produce.

A land tax could be instituted related to the value of all land, separate from the buildings or structure built upon it, for the purpose of encouraging putting land into production in its highest use. In the case of agricultural land, a land tax would encourage holders of vacant land at least to rent it to neighboring farmers for annual crops whose value is sufficient to pay a rent covering the land tax. Sales by those who are not interested in making the land produce would also be stimulated.

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[42] Arnolli, op. cit.

Municipalities are already charging (though often not collecting) a property tax, but this tax is based on the assessed value of building (legal or otherwise) rather than on the land. A tax specifically on land would have the effect of encouraging its use. Where land is agricultural, the rate should be established based on its highest use; for example, where land is capable of producing high-value crops like vegetables, it should be taxed at a higher rate than land only suitable for grain production or even for pasture. Municipalities may want to tax land either already being used for, zoned for, or converted to residential or commercial use (even without being properly zoned) at a different rate and under different terms. This could include a large one-time tax upon conversion from agricultural to non-agricultural use, or upon sale for conversion.

6.3 MAFRD and Land Fund for Expansion of Small, Private Holdings

While recognizing KTA's mandate over land which is not privately owned, MAFRD nevertheless does have a position on how land should be managed until such time as it is privatized. It seems apparent that at the end of KTA's mandate, which extends until September 2005, significant amounts of land will still not have been privatized. MAFRD has also pointed out that there are other claimants seeking restitution of land expropriated in the past in favor of SOEs. The ministry proposes setting up an agricultural land trust to manage both disputed land and any land not privatized by KTA until such time as it is privatized. The agricultural land fund would be managed by a board composed of MAFRD and other interested bodies and institutions. If such a trust is approved, its structure and operation would have to be determined as well.

All enterprises, land, and forests would be put into the trust fund. Factories would be split off from the land and disposed of first, since their disposition is easier and less controversial. Management of the trust would accept claims from those seeking restitution and would settle these claims in accordance with the law. (As discussed elsewhere in this report, the amount of land under KTA's control and which might eventually constitute the basis of the agricultural land fund is not entirely clear because of the state of cadastral records and definitional problems, though it is significant in terms of arable land and pasture.)

An agricultural land law is being drafted. A team of international experts funded by the European Agency for Reconstruction (EAR) is working on this draft legislation. The issues are complex, and those related to spatial planning have the highest priority. MAFRD together with MESP is concentrating on this issue, and expects additional support in the near future from a legal expert from abroad. MAFRD's goal is to finish its part of the work by June or July 2004, after which the draft law would be submitted to the Assembly.

The MAFRD recognizes that the astronomical prices of rural land are a consequence of the ability of buyers to convert land to non-agricultural uses (commercial and

residential construction). It is working with MESP and the municipalities on setting up land use plans respecting KTA's mandate over socially owned property. Few conflicts with municipalities are envisioned by MAFRD, although the effort to zone and control the land markets will be difficult. It is easy to assume that once zoning is in place, land for agricultural purposes should find a price level related to its value for agricultural production rather than conversion for other uses. Putting this policy into practice will be very difficult.

Greater clarity on the value of agricultural land will facilitate bank lending for agricultural production. Currently banks find it difficult to lend based on agricultural land as collateral, preferring houses and urban property, which is a poor substitute and limits lending to agriculture. Frankly, in some cases, banks do not have any idea what rural property is really worth and are unwilling to take the risk of finding out.

MAFRD will also be proposing a law prohibiting further subdivision of agricultural land through inheritance. Although the terms of this proposal were not available for review, the idea is that one person will inherit and operate the land and will then share revenues with co-inheritors. This proposal is on the ministry's agenda but has not yet been drafted because of other activities with higher priorities. It is also not clear how this proposal will fit in with existing inheritance practices; nor is it clear that it will not further reduce the inheritance rights of women.

MAFRD in its Greenbook[43] recognizes the small farm sector as a reality unlikely to change in the short term and an asset on which to form appropriate policies designed to increase agricultural production, employment, and incomes. It seems likely that when the agricultural land fund becomes operational, means will be found to make land available in parcels tailored to the needs and desires of local farmers. This will allow able farmers to expand and develop more efficient farm operations focusing on those crops and livestock activities that are most profitable.

6.4 Pastureland

Private farmers have almost all the cattle in Kosovo, numbering over 155,000 head. There is an average of about one cow per farm family, and only 2% (3,100) of farms have three or more cows. The number of cattle continues to rise in response to a deficit of locally produced milk and favorable producer prices for milk despite EU subsidies for powdered milk. Sheep had only returned to 58% of their pre-conflict levels by 2001, but 1,000 farmers are engaged in sheep production. The duty on animal feed, like most other imports (except fertilizer) is 26.5%. Animal feed is in short supply and very expensive, and hay prices are very high as well.

[43] Ministry of Agriculture, Forestry, and Rural Development, "The Kosovo Greenbook: A Strategy for Sustainable Agriculture and Rural Development," Pristina, May 2003.

From Table 4, it is clear that the SOEs control a substantial proportion of the pastureland in Kosovo. The tenure forms used for the privatization of this land are of major importance, particularly to the small farm sectors with increasing numbers of livestock.

In the transfer of land from the SOEs to the private sector, presumably pastureland as well as cultivatable land will become available to private farmers. If all pastureland were transferred, private farms would have access to 2.5 times the pasture that they have now, encouraging livestock production, and reducing pressure on cultivable land. Cattle not actually being milked (and some which are) can be put out to pasture instead of being stabled or fed with fodder crops. This transfer will have the effect of freeing up cultivable land for the numerous higher-value crops (including vineyard and tree crops) which can be grown in Kosovo. Without any change in technology, transfer of unused or underutilized non-private pasture to the private sector would have a positive impact by increasing milk, meat, and cheese production. Its impact could be even larger if the transfer is carried out in parcel sizes appropriate to farmers engaged in livestock production, and if it takes place using various tenure forms which encourage better pasture management such as transfer with full possession rights, long-term leases, community oversight of pasture use, and temporary fencing.

6.5 Market Solutions to Small, Fragmented Holdings

One weakness of current policy making with reference to disposition of agricultural land is the failure to understand the economies of the different crops and types of production and their costs. The presumption, unsupported by any factual basis, that there are significant economies of scale in general crop production is not supported by experience here or in countries with similar conditions and population pressures. The record of most SOEs with thousands of hectares of land and privileged access to capital and machinery is not a brilliant one. Yet, citing subsistence orientations of small-scale farmers and the economies of scale arguments analyzed above, KTA has sought to privatize agricultural SOEs as single units[44]. The alternative is to separate

[44] KTA, Agricultural & Forestry SOEs In Kosovo: Assessment & Proposed Reform Initiatives, August 2003, p. 7. The argument given is the following, **emphasis added**: "The vast bulk of farmland in Kosovo (some 71% or 412,000 ha) has historically been characterised by **small subsistence farms** (some 150,000 households), with average land holdings of 3.2 ha, 2.4 ha agricultural and 0.8 ha forested. On average such land holdings are divided between five to 10 dispersed parcels. Agricultural land is generally divided between basic crop rotations of wheat and maize, used to feed the rural household and their livestock. Given their small size and large number of household members, **very little produce from the private sector reaches the market**. [Note the failure to notice vegetable, potato, milk production, etc.]

Thus, although SOEs account for a relatively small proportion of overall agricultural land, they cover some of the most fertile areas of the territory and account for the **only large contiguous land parcels and production units, allowing for economies of scale in farming**. This underlines the vital importance of SOE land to the development of commercially-viable farming in Kosovo, which is

out industrial aspects and offer local farmers first option on buying or leasing land suitable for cultivation, pastureland, and wood and forest production.

6.5.1 Land Rental and Commercial Land Value

Once land use plans are in place and zoning is established and impartially enforced, the speculative demand for agricultural land for the purpose of subdivision for commercial and residential purposes will be reduced. At this point agricultural land values will be established. The current chaos in the land market spurred by speculation is inhibiting lending based on agricultural land because neither banks nor anyone else really knows what a piece of land is worth in agricultural production. Land rents may be some indication of the value of agricultural land, since rents up to 1/20th of the value of the land may be justified. Rental value of some land on SOEs is €30-100; on that basis the land might sell for up to €2,000 for agricultural purposes, though the rent may be less than commercial since most rent to SOEs appears to be pocketed by directors or shared among staff. Prime agricultural land suitable for vegetable production in Prizren is renting for €1,000-1,500 at the present time, indicating that it might be worth €20,000-€30,000. The author of a recent study of agricultural credit gives a rough estimate of the general value of agricultural land as €5,000. (By comparison, good agricultural land used for agriculture in the American Midwest might sell for around €3,000 per hectare.)

From the Gjakova study of actual sales of agricultural land in 2002 and 2003, the following prices were recorded in sales contracts for parcels of agricultural land (parcels without buildings or yards and without vacant areas, and excluding parcels of sold forests and pastureland).

Table 5: Number of Sales and Price per Square Meter of Agricultural Land Parcels

Year of Transaction	Mean	No.	Standard Deviation
2002	12.69	74	13.687
2003	17.63	41	18.120
Total	**14.45**	**115**	**15.518**

Source: Skender Tullumi, "Study of Land Markets in Gjakova," March 2004.

The average sales contract price of land classified in one of the five agricultural classes and sold in 2002 was €126,900/ha and increased to €176,000/ha in 2003. The variability among these sales is quite large, however (standard deviations greater than the means in both years and for the sample as a whole), indicating that the distribution is quite skewed. Half of the sales in those two years were for prices in

able to produce marketable surplus and contribute to the process of import substitution in agri-food products."

excess of €90,000/ha (€9 per square meter), and most of the higher-priced sales were for parcels close to the city of Gjakova or along the main highways, indicating that they were probably being sold for non-agricultural uses.

It appears that people are buying agricultural land for prices far above the potential value of the agricultural production that could be expected from the land. A special study is needed of land bought and actually used for agricultural purposes. It seems likely that the lower-priced parcels and the larger parcels being sold are probably more indicative of land being purchased based on its potential for agricultural use, which in the case of Gjakova (and Prizren) is quite high for vegetable production.

An additional point is worth noting based on the results of this study. The extreme variability in land prices implies great uncertainty about what any given parcel of land is really worth (and what it could be sold for fast); this fact is one reason banks are reluctant to accept agricultural land as collateral for loans.

Table 6 below shows the amount of agricultural land (excluding sales involving other types of land as well as agricultural land) sold in 2002 and 2003. The average amounts sold in the 118 sales were 4,933 square meters in 2002 and practically the same average area sold in 2003, even though the number of sales transactions declined dramatically in 2003. A total of 37.5 ha were sold in 2002, while only 20.3 ha were sold in 2003. The median size of parcel sold during these two years was 1,924 square meters, meaning that half of the sales were for less than 1,924 square meters and half were for more than that area. Just 13% of the sales were for more than one hectare. That small parcels of land classified as agricultural are being purchased is consistent with the hypothesis that the actual intended use of these parcels are for non-agricultural purposes.

Table 6: Areas of Agricultural Land Parcels Sold Gjakova (in square meters)

Year of Transaction	Mean	No.	Sum	% of Total Sum	% of Total No.
2002	4933.22	76	374925	64.9%	64.4%
2003	4822.81	42	202558	35.1%	35.6%
Total	**4893.92**	**118**	**577483**	**100.0%**	**100.0%**

Source: Tullumi, 2004, op.cit.

6.5.2 Land Needs for Profitable Activities

Bankers, despite their general lack of knowledge of agriculture, tend to be keen judges of what is profitable and what is not. Among the activities which bankers consider to be the most profitable are the production of vegetables both in open fields and in greenhouses in the municipalities of Prizren, Rahovez, and Gjakova. In these three municipalities, it is easy to sell agricultural land, and people are willing to

buy it at high prices for agricultural use because of the profitability of vegetable production. Vegetables are being sold at the local market and to processing plants. Some are even being exported to Montenegro and Albania, and in a few cases, even to Switzerland and Germany. People who have restaurants in Western Europe come to Kosovo with their trucks and take the vegetables back, thus avoiding the problems Kosovars have in transporting goods in trucks with Kosovo plates[45]. Vegetable production, especially greenhouse production, is normally carried out on small areas.

Another activity considered profitable is trout aquaculture. It requires access to clean water at cool temperatures, but the amount of land required for raceways and other facilities is not great.

Potato farming is also seen to be profitable. The larger farmers raising potatoes are growing around 10 ha of potatoes. However, potatoes are profitable on even smaller extensions. Highest quality irrigated land is being bought for up to €100,000 for potato production, although some other land being used in production goes for as little as €20,000.

6.5.3 Land Acquisition from Agricultural Land Fund

It seems clear that KTA will not succeed in privatizing all the non-private land it holds before its mandate expires in September 2005. It seems reasonable to assume that factories will be separated from agricultural land. Even wineries might be spun off from surrounding vineyards (which could be parceled up and sold separately), since economies of scale are not apparent in Kosovar grape production and small farmers have more than half the area under grapes already. Non-private land can then be made available to local farmers and business people. Municipal land use plans will most probably cover what use can be made of the land.

If land is appropriately zoned, land zoned as commercial and residential will presumably be sold at premium prices for those purposes. Land about which there is no dispute concerning its zoning status or prior claims can either be sold or rented out on leases of a length appropriate to the kind of agricultural or livestock activity and in parcel sizes appropriate to the needs of individual farmers in the communities or other people with the resources to engage in commercial farming.

Provision will need to be made to allow for sales or leases in sizes and on terms appropriate to the activity. A person planning to grow high-value vegetables in a greenhouse environment may find one or two hectares sufficient but will need property rights or a very long-term lease. On the other hand, livestock operations,

[45] Trucks and other vehicles with Kosovo plates are not allowed into Serbia, whereas there is no restriction on the entry of vehicle from these places into Kosovo. Tariffs on imports of agricultural products from these countries for agricultural products are fixed by UN regulations at 1%.

even if managed intensively, will require greater areas but shorter leases, except small parcels used for milking parlors or cooling facilities. The greater the degree of flexibility in the terms available, the higher will be the income to the body doing the sales or giving out the leases. Systems to reduce graft and increase its costs to those involved will have to be put in place. Centralized systems would probably neither maximize revenue to government nor economic benefits on sales or leases to farmers.

6.5.4 Private Land Market

Despite the various prohibitions against land transactions over the last 15 years, land sales have been impossible to suppress. Lands illegally privatized to Serbs from SOEs under the guise of restitution have been sold to Albanian Kosovars. These transactions will be hard to reverse.

Speculative sales of land and its sale for commercial or residential uses are well documented in this report. However, in areas where land is valuable for agricultural purposes, a brisk market in land for agricultural purposes is developing. It is hard to conceive of private land remaining idle for long in areas where it is valuable in terms of its use in agricultural production. The increasing availability of bank finance will only make it more unlikely for productive land to remain vacant for extended periods of time.

Currently, large tracts of SOE land are available for rental, apparently at below-market prices. Parcels are rented out by directors or by SOE employees who are allowed to rent out the land in lieu of wages that they are no longer being paid on a regular basis. The availability of this land for annual crop production makes the rental, leasing, and sharecropping of private land harder to achieve. Once an arrangement is made to dispose of SOE and other non-private land to private farmers willing to buy or take it under leases of varying terms, a true market in private land can be expected to develop.

Where land is fragmented, particularly among members of the same family or clan, intra-family arrangements should allow the land to stay in production and to be operated in units close to optimal for the crops which can be grown on the land. Those active in farming this land can be expected to compensate those who are not able to do so because of age or infirmity or residence in the cities or in another country. This compensation may be simply providing some part of the product of the land (a few bags of beans or flour) or of other products grown on other parts of the farm (not necessarily the fragment being utilized). In the mean time, the person's possession or property rights in the fragment remain and can be realized if and when the parcel is sold.

It needs to be recognized that given the size of Kosovo and the short travel times between rural areas and the seven major population centers, many rural residents

will be part-time rather than full-time farmers. Some members of the family may work in town while others manage farming activities. And all members may provide labor at peak periods of demand (like planting and harvest). Their off-farm incomes stabilize income streams and provide such farm families with privileged access to bank finance. In such cases, even small farm units may engage in intensive production of high-value crops, and families living on them may be interested in hanging on to farms which might be less viable as the family's sole source of income. Families may also be interested in buying additional land to expand their operations. This situation, plus easy access to markets for farms located near any of the major population centers, will make such farms attractive to purchasers from outside the community. Land prices will be forced up, particularly if there is a house on the property or the property is zoned in such a way to permit construction of a residential house on land otherwise zoned for agriculture. Such pressures, however, typically lead to the conversion of agricultural land to non-agricultural purposes. It is uncertain whether zoning and land use controls are feasible in Kosovo to prevent suburban sprawl and ensure that houses are located at the edges of fields, near main roads, on slopes too steep for cultivation, and in a layout which minimizes the cost of providing services (electricity, piped water, sewerage).

Given the small size of Kosovo, its high population density, the very large diaspora community, and that community's increasing wealth, it seems likely that a thriving market in private land will continue. Even with strict zoning, land values are likely to remain higher than is totally justified solely by returns to agriculture. Fragmentation is likely to continue, even if prohibited by law, but through private arrangements among fragment holders its impact on production will be less severe than prognosticated.

Land prices in areas where minorities cannot return will be affected initially, and no policy or set of regulations can change this fact. Once all those not willing or not able to return have sold their land at relatively low prices, future sales will then more closely reflect the value of the land in agricultural uses.

7.0 Property Rights in Relation to Bank Financing

The theme of this section is the implications of the property rights issues for capital mobilization, investments in productive activities and immovable and moveable property markets.

7.1 Macroeconomic Factors Affecting Investment

By December 2003, total deposits in commercial banks reached €504 million, having grown by 20% since the end of 2002. Total assets of commercial banks reached €581 million, up 23% from the figure for the previous year. The amount of outstanding credit had grown by 169% compared to the end of the previous year. The gap between the amount reinvested abroad compared to that invested in the domestic economy narrowed, reflecting increased confidence in Kosovo's banking system. Savings deposits grew at a faster pace than current accounts.

General budget revenue grew in line with projections to €608 million. Seventy percent of tax revenues were generated at the border. Domestic tax revenues (derived mostly from income taxes) grew from €74.6 million in 2002 to €108.1 million in 2003, but still are only a small portion of total revenue (14.7% in 2002 and 17.8% in 2003). Nevertheless, their growth as a percentage of total revenue is a positive sign; revenues from domestic taxes are expected to grow substantially as the Central Finance Authority moves more aggressively on collections. Since revenues from border and domestic taxes are the source of funding for the consolidated budget, public sector investments and maintenance of infrastructure are low; those that are made are dependent on choices made and funding provided by international donors.

Kosovo ran a huge trade deficit with the coverage of imports by exports remaining at a very low level (3%). In absolute terms, export revenues were lower in 2003 (€24.7 million) than in 2002 (€27.3). The largest category of exports is metal and scrap (47%), followed by wood and plastic (23%), and food (22%). The main sources of imports to Kosovo (after the EU) are Serbia, Macedonia, Turkey, and Bulgaria.

The consumer price index is 1.6% higher in 2003 than the previous year, reflecting a core rate of inflation around 2% per annum. Unemployment is estimated to be in the 50-60% range; the number of people listed as unemployed rose to 282,000, a 9% increase compared with the previous year.

GDP rose from an estimated €1.687 billion in 2002 to a projected €1.825 billion in 2003. Per capita GDP rose from €866 to €917. GDP growth is attributable to three main factors:

- foreign assistance,

- remittances, and
- imports[46].

The adoption of the Euro as Kosovo's currency provides stability but at the same time makes an independent monetary policy impossible. It also makes it difficult to compete with trading partners whose economies are based on soft currencies. Dynamism of the private sector is not matched by efficient regulation or supervision. The lack of final status for Kosovo and of appropriate foreign trade regulations inhibits the development of exports and the orientation of the economy toward the export market. Foreign investment remains minimal for the same reasons, and foreign investors have shown little interest in acquiring shares in local companies.

7.2 Overview of the Banking System

The banking system is composed of two foreign and five domestic banks. The two foreign banks are Raiffesen (ex-American Bank of Kosovo, ABK) and ProCredit (ex-Micro-Enterprise Bank). The five local banks are the New Bank for Kosovo (BRK), Bank for Private Business (BPB), Kasa Bank, Economic Bank, and the Credit Bank of Pristina (BKP). Both foreign-owned banks had initial support from the US Government.

In addition to the banks, there are three non-bank financial institutions—the EAR Agro-Business Unit (ABU), the World Bank's Interim Credit Unit, and the German Investment and Development Co.—and about 15 microfinance institutions or project-run credit programs. All banks and non-bank financial institutions make use of moveable or immovable property guarantees as one of the criteria for lending. Microfinance institutions are largely involved in group lending, although some are making individual loans and are probably taking collateral guarantees of some kind for these loans to reduce on these loans.

System-wide banking activity has greatly increased. The amount of loans outstanding is up by 169% for the December of 2003 compared with the same date for the previous year. The biggest category is trade (49%). Agriculture (including agribusiness) has risen from zero in 2000 to 0.5% in 2001 and to 2% by the end of 2003, still very low proportions of the overall lending occurring in Kosovo. Lending for the category of services, tourism, and hotels/restaurants has also risen from 17% to 31%. Lending for industry has gone up from about 3.5% to 7% from December 2002 to December 2003. Though the banks' portfolios were still dominated by lending to private corporations, lending to households (about 6.5% of lending in December 2002) had increased to 10.0% by December 2003.

[46] Imports attract a 26.5% duty, including imports of agricultural inputs and machinery; there is no rebate of import duty on inputs used to produce products for export. Source: BPK, Monthly Statistics Bulletin No. 28, December 2003.

Most banks have little remaining liquidity and are close to the maximum they can loan based on the recommendation of the Banking and Payments Authority of Kosovo (BPK) to maintain a loans-to-deposit ratio of 0.65 to 0.70. Additional lending will require increased deposits or inflows of funds from abroad. At the insistence of BPK, the banks have increased their minimum capital from the very low levels BPK authorized in 2000 to get the banking system going and growing to €4 million by the end of December 2003. More loans are being made for productive purposes (rather than trade), the average loan size is larger, and their average term is longer, all of which increase loan risks. This tremendous increase in lending has been achieved in large measure based on the ability of the banks to take pledges on moveable property and mortgage on immovable properties as collateral to guarantee their loans.

7.3 Operations of Selected Banks and Use of Property Collateral

7.3.1 Raiffeisen Bank

Raiffeisen Bank purchased the American Bank of Kosovo, with the remaining shares held by the Kosovo Business Finance Fund established to get lending started in Kosovo after the conflict. As initially planned, the Fund evolved into the American Bank of Kosovo in 2001. Raiffeisen purchased Kosovo Business Finance Fund in December 2002, with USAID remaining a minority shareholder. The bank's name was changed to Raiffeisen in May 2003, and in July the remaining shares belonging to USAID were purchased by the bank. With its purchase of remaining shares, some restrictions on lending, such as the prohibition on lending for alcohol, luxury items, and pesticides (covered under USAID regulation 216) were removed. Lending initially was for SMEs anywhere in the territory, guaranteed by immovable property collateral. Based the difficulty of selling of rural property, the bank now focuses more on urban property, which is easier to sell.

Raiffesen was the first bank to attempt to take mortgages on apartments. A request was made to UNMIK and the president of the court to allow their use as collateral. Although given the state of cadastre and courts records, there is no way to be 100% certain that the person's possession of an apartment is clear and unencumbered. However, by following the trail from purchase of the apartment, municipal tax payment, and electricity and water bills, if there have been sales, the bank follows the chain bank to the original purchaser. Despite the risks involved, out of about 4,000 loans, the bank has only been the victim of a single fraud (where the debtor used falsified records and then defaulted on a loan in excess of €50,000). In this case, the culprit has been sentenced to four years in prison, but the bank so far has not been able to recover the money despite a judgment in its favor. The borrower had provided proof of having purchased the apartment in the 1990s from a Serb, with the contract showing that the money had been received, verified by the municipal court of Pristina, and changes were made in records held the cadastral office. He had a possession list in his name. Except for this one case, the bank has

never had problems with loans guaranteed by immovable property, despite the problems with the cadastral records of which the bank is well aware and which are documented elsewhere in this report.

In Serbian areas, people file contracts in Serbian parallel courts, which they prefer to the UNMIK courts. The bank makes use of the Serbian courts because they are functioning. UNMIK courts do not provide police for repossessions. The Serb courts do provide police protection when the bank is forced to seize moveable property.

At first the bank took only immovable property as collateral. However, this changed, and Raiffeisen Bank was the first to use make use of the moveable property registry, using the new law on pledges (2001/5). The bank now uses the registry extensively and is able to rapidly seize property using it. It takes pledges on machinery and equipment, vehicles, and other items that are important to the borrower. When the bank is forced to repossess, the courts and police cooperate; somewhere between 30-50 requests for judgments to repossess moveable property have been made. When the borrower is cooperative, bank staff goes to repossess alone; otherwise they are accompanied by the police. Judges make a settlement in the court, giving people additional time (a week or two) before the repossession takes place. Borrowers may also ask for (and be given additional time) on occasions when staff (and police) come to seize moveable assets. In most cases, borrowers pay at this point. This is the solution sought by the bank because first, it does not want the moveable property and second, it sometimes has trouble selling the assets. A year ago, the moveable property registry was not being used at all; now it is used quite frequently and apparently without major problems. Raiffessen is the first bank to use this type of collateral and has helped other banks and colleagues in other banks to better understand the system. It has now been asked by BPK to provide training to the domestic banks on how to use moveable property pledges as collateral.

The bank does its own valuation of property for collateral purposes. It will switch over to using transaction data on actual sales at the registry office, which is to be established according to the mortgage law (2002/21, 20 December 2002). The courts are not consistent from region to region in how they handle verification of property sales. The procedure for business property is being held up by the lack of this registry in most municipalities; residential property continues to be registered under the old system.

In one case in Produjevo, the court refused three requests for sequestration and did not follow the 2001/5 regulation, which should have allowed the bank to seize property within three days. Instead, the court followed other procedures that took nine months, refused the Bank's request for seizure, and forced it to take the decision to appeal, which normally takes another two years. The bank showed the judge a copy of the regulation; it also wrote a letter to UNMIK, to the president of the court, and copied it to the president of the court in Pristina. As a result, the bank will probably get a favorable judgment in a few months (rather than years). After the

judge in Pristina was familiarized with the regulation, he is now following it in similar cases. Furthermore, other judges with similar cases call him to find out how the cases are supposed to be handled, and they are beginning to handle requests for the seizure of moveable assets in accordance with the regulation.

Raiffeisen Bank is also working with judges to convince them that the bank be allowed to file second mortgages. Some judges allow them to file second mortgages on their own loans, but do not understand the concept of filing second mortgages on remaining value for a property already mortgaged to another bank. A second mortgage on a property, especially if the first mortgage is with some other institution, increases the risk for the bank taking the second mortgage; however, the decision should be for the bank to make, not for the court.

Raiffesen is making some loans to agriculture (such as livestock loans) but only in conjunction with agribusiness enterprises and conglomerates engaged in commercial operations with a steady cash flow. Where such loans are made, the bank takes pledges on the cattle as well as machinery, despite the risk that they can disappear. Where moveable property has disappeared, the bank has succeeded in finding it.

In a significant proportion of the loans, borrowers do not have property in their own name, and in such cases the bank requires mortgages on collateral from guarantors who have property in their own names.

7.3.2 ProCredit Bank

Founded in December 1999 as the Micro-Enterprise Bank, this bank began operations on the first of January 2000. Micro-Enterprise Bank was the first bank licensed by the BPK to operate in all fields of banking activity in Kosovo. It is subject to UNMIK regulations 1999/20 and 1999/21 on Bank Licensing, Supervision and Regulation. Micro-Enterprise Bank received its initial support from the Commerce Bank of Frankfurt, the European Bank for Reconstruction and Development, the International Finance Corporation, *Kreditanstalt fur Weideausbaum* (Germany), the Netherlands Finance Company for Developing Countries (FMO), and International Micro Investments (Germany). Micro-Enterprise Bank's branch network covers all major cities. The bank had a major role in bringing in, exchanging, and providing currency when Kosovo adopted the Euro on 1 January 2002. At the end of 2002, the bank had 267 employees and eight expatriate managers.

As the first and, for a time, the only bank in Kosovo, Micro-Enterprise Bank held the accounts of UN agencies and other programs and even now has more than 60% of such accounts, which initially provided it with considerable liquidity. In late 2002, the bank changed orientation away from micro-enterprise lending and toward providing service to a broader spectrum of clients. It moved toward the provision of more general commercial banking services and making larger loans. To make these changes, the bank increased its capital base. It also changed its name to ProCredit

Bank, though it differs from other ProCredit banks in developing countries around the world. ProCredit Bank in Kosovo is engaged in general banking operations rather than the more narrow focus on micro-enterprise lending which characterizes ProCredit banks elsewhere.

The total amount of ProCredit Bank loans outstanding doubled from €22 million to €44 million from December 2002 to December 2003. Its arrears rate (loans past due more than 30 days) is negligible, currently 0.18%. By way of comparison, the rate for banks in Germany is five times as high, at approximately 1%. This serendipitous state of affairs is unlikely to continue for much longer, since the risk on new lending is higher than on its older loans.

The average loan term is still only 15 months, but the average term is lengthening. With the change in loan orientation, loan sizes are also larger. Furthermore, a higher percentage of the loans involve production as opposed to trade, and despite conscientious loan appraisal, the risks are inevitably higher on this type of lending. The arrears rate will inevitably rise, but risk is within acceptable bounds and is covered by interest rates which range from 12% for the largest and most secure business loans to 24% for the smallest micro-enterprise loans (€250-€500).

Small loans continue to be made, but are not really profitable for the bank given the amount it invests in analyzing each loan. The bank just started making housing loans with a maximum loan term of five years (the average term being three years). Most lending is still short-term (less than one year), but longer-term lending is increasing and loans with a maturity of over two years now make up 25% of the bank's portfolio. Political risks and uncertainty surrounding the final status of Kosovo mean that lending in Kosovo requires a country-risk premium. Most business lending is for three years or less, but the bank just made its first business loan with a four-year term. Foreign investors still perceive the situation as being unclear in Kosovo and the place as being too risky, and are not investing in significant numbers or amounts.

Worldwide, the ProCredit Bank has experience with agricultural lending; in Kosovo, the bank began lending for agriculture in Gjakova two years ago. While the focus of lending is for agriculture, repayment is often from other non-agriculture sources. Loan recovery has been similar to other sectors, unlike Albania where 12 of the first 13 loans to agriculture failed. A few of the larger agricultural loans (€40,000-€70,000) are secured with mortgages on immovable property. While more problematic than lending for trade, the bank recognizes its obligation to promote production in Kosovo and this includes lending to the agricultural sector. Loans to the agricultural sector were at first short-term, but their term was subsequently raised to 24 and now 36 months.

The activities one branch manager perceived as being profitable are potato production, greenhouses for vegetable production, installations for trout aquaculture, milk cows, and trade in cattle. Many of the agricultural loans are recovered by

payroll deduction from people who have salaried employment as well as their agricultural activity; multiple sources of income reduce risk on such loans.

However, some agricultural loans have grace periods because the irregular cash flow of agriculture and the irregular payment schedules increase risk. In one branch where the arrears rate in a portfolio of over 3,600 loans was 0.1%, out of the first 80 agricultural loans (which it had only started eight months earlier), three or four loans were already showing some problems. These included one case of diversion of the loan to pay old debts instead of investing in the activity proposed in the loan application, which constitutes fraud. At the time of the interview (February 2004), the bank was still negotiating rather than seizing the moveable property collateral to which it is entitled, because seizing the collateral (trucks) would reduce the borrower's ability to pay. Factors increasing risk in agricultural lending are the irregular payment schedule and the low-level of managerial expertise of the borrowers in this sector. The agriculture portfolio nationwide of the bank is €2.5 million (almost 4%) in a total portfolio which stood at €66 million in December 2002.

The bank initially made only small loans for home improvement up to €5,000. Now it makes loans up to 60 months. Smaller loans usually depend on pledges of moveable property. Loans over €20,000 normally require immovable property mortgages. Loans are only to borrowers who have property in their own names. This limits the bank's ability to lend to developers who build apartment complexes, since they do not put the apartment in clients' names until they have collected the final payment.[47] The bank requires its customer to be the final owner for it to secure a mortgage against the apartment, and it is therefore unable to finance the building of apartments under these conditions.

ProCredit Bank managers are concerned with the possibility that its customers may be involved in tax fraud. It has already turned down loans to two clients because of its concerns about unpaid tax liabilities. As is the case in most countries, the tax authorities (Ministry of Finance and Economy) have first priority to assets of delinquent taxpayers and have started seizing assets recently. The bank is worried that this could jeopardize its position where letters of credit are secured by cash deposits (which the Central Fiscal Authority could seize). It is also worried about other types of loans which are secured by mortgages or pledges on property and which also could be subject to seizure to pay amounts due on unpaid tax bills.

Loan authority at branches is limited to €15,000, but larger loans up to €30,000 can be approved at headquarters, informing the branch by facsimile. Higher

[47] Prospective apartment buyers are solicited by a contractor; they put 40% down to begin construction, 30% when rough construction is finished, and 30% when the apartment is finished and turned over to the buyer. The apartment is only registered in the buyer's name once he has made final payment and the apartment is turned over.

amounts are reviewed by the credit committee at headquarters that meets once or twice a week. Business loans over €50,000 normally require immovable property as collateral. Even where there is some difficulty in identifying who is the legal possessor of real property (particularly buildings and parts of buildings), the value of the land can be used as a loan guarantee. The bank makes an effort to circumvent problems and find a way to make use of the property mortgage as collateral. Where property is not in the name of the borrower, property in the name of guarantors is acceptable. In some cases for repeat borrowers, the bank finds a solution despite the lack of an ironclad guarantee.

The ProCredit Bank together with FINCA and some other financial institutions was a founder of Kosovo Credit Information System (KCIS). USAID provided some support at a critical time on helping the system develop appropriate software. After some initial resistance by other banks concerned with costs and not wanting to collaborate with "competitors," now most banks and microfinance institutions make extensive use of the services KCIS provides. Banks use its services in a number of ways:

- to investigate whether a prospective borrower has other outstanding loans (credit bureau and credit history);
- to put its own loans into the database; and
- to register the assets used to guarantee a loan, which most banks do in the case of loans over €20,000.

It costs €5 to record a pledge on moveable property regardless of its amount; there is no cost of registering the fact that the bank is making a loan to a given client. For pledges of assets, documents of vehicles are copied, photos are taken of machines, and serial numbers noted. Animal inventories (e.g., the number of milk cows) are taken as pledges, but individual animals are not.

The bank sometimes has problems with enforcing its loan contracts because of the lack of clarity in the legal system. Local judges have considerable prerogatives and the same case may have different outcomes if tried by different judges. If not rectified, this could be a factor inhibiting lending in the future.

7.3.3 Kasabank[48]

Kasabank has 32 branches around Kosovo and a loan portfolio which, according to its director, totaled around €27 million in the third quarter of 2003. Lending for agriculture accounted for €2.7million (about 10% of total lending), largely for greenhouse construction, vegetable production, and input supply at the level of the dealers. Its lending has focused on larger agricultural enterprises. Loan terms have

[48] Based on Tim Hammond, Review of Agricultural Credit, Pristina October 2003.

been short (up to 12 months), but recently a small number of loans have been granted with terms of two to three years. Interest rates are in the 11-12% range.

Branches have a lending approval limit of €15,000.

7.3.4 Bank for Private Business[49]

Information is available for the Prizren branch of the Bank for Private Business (BPB). The current lending portfolio at this branch was around €4.7 million in October 2003. Between 25-28% of this lending was for agricultural activities. Their maximum loan term was 12 months, but management had already decided to lengthen the term on future lending up to a maximum of three years. Agricultural loans for less than €10,000 can have movable assets as collateral; those over €10,000 require immovable property (predominately land and houses). Arrears are less than 1%, but the bank has already seized one house for non-payment of a loan.

7.3.5 New Bank of Kosovo[50]

The headquarters of the New Bank of Kosovo (BRK) is in Pristina, and it has seven branches across Kosovo. The loan portfolio of the BRK was €29 million in the third quarter of 2003, of which €3 million is to the agricultural sector. Ninety-five percent of loans are short-term. The loan repayment schedule generally calls for equal monthly payments (i.e., is not well attuned to agricultural cash flow). Their volume of loans to small primary producers is negligible.

The manager of the Gjakova branch noted that "small farmers are reluctant to pledge houses as collateral or [to] go through the process of registering houses in their own names."

7.4 Non-Bank Financial Institutions Use of Property Collateral[51]

7.4.1 Agro-Business Development Unit

The Agro-Business Development Unit (ABU) was established in 2001 by the EAR. Its primary objective was to stimulate agriculture by lending to the agro-processing sector. Initially, the minimum loan amount was set at €100,000 and was subsequently scaled down to €40,000. Loan terms were up to five years. ABU targeted agricultural and agribusiness operations; there was also an Industrial Development Program (IDP) that provided lending to SOEs.

[49] Hammond, October 2003.
[50] Hammond, October 2003.
[51] Based on Hammond, October 2003, and field notes.

A third program, the Interim Credit Unit, provided loans to private businesses. This program ended on October 30, 2003. The US$3.5 million portfolio funded with World Bank resources was transferred to Raiffaisen Bank; the remainder of Interim Credit Unit's portfolio (funded by the EU) was transferred to and is now managed by ABU, which had some major problems with some of its early loans.

For example, it is reported that it took a mortgage on four hectares of agricultural land (valued at €600,000), but was unable to foreclose because there was no mortgage law at the time; it also seems possible that the value of the lands was grossly overstated. ABU did, however, repossess some cows from an SOE. ABU is now adopting stricter standards of loan appraisal and more stringent collateral requirements. It is said that sometimes it takes a year to get approval for a loan. Furthermore, in some years, there are as many as 600 applicants for ABU loans and as few as six successful borrowers; the rest end up obtaining financing, if they can obtain it at all, from commercial banks at rates that range from 14-16%.

New operations are scheduled to be under an "apex" structure where a pool of funds will be available for lending through one or more commercial banks for largely agricultural investments. US$12 million of funds are anticipated; together with US$8 million carried over from previous activities will make a total of US$ 20 million available. In early 2004 in the absence of a clear policy statement on the part of MAFRD, it is not clear what businesses would be eligible for funding and what type of collateral would be required.[52]

A number of businesses that had been created as a result of the earlier "commercializing" of SOEs and had been given loans from ABU were visited during fieldwork. Informants all thought that the ABU terms were onerous, despite interest rates below or at the lower limit of rates charged by commercial banks to their best customers. Two of the three informants said that they had taken one loan, paid it off, and not taken new loans. The owners of one agribusiness reported having received a loan for rehabilitating a damaged irrigation system on a dairy and livestock operation. The loan was for €150,000 for three years at 10% APR. They had to provide immovable property as collateral (a private house and private land worth €470,000).

One person with commercialized a vegetable and dairy-processing plant in Prizren reported taking a loan of €1 million at 11%, including a flat 1% fee for processing. He never took another loan because the costs were too high and the term too short (one year, including a six-month grace period). No information was available on collateral for the loan.

Another company is importing potato seed and producing potatoes with a group of farmers with the help of a series of group loans from ABU. At the time of the

[52] Based on information provided by Tom Easterly of the Business Development Services Project.

interview (February 2004), the group was negotiating annual production loans for potatoes and a five-year loan for mechanization. The key to obtaining ABU financing has been the fact that the producers were organized. In addition to the mortgage guarantees on the immovable property of each farmer, joint and several guarantees among group members made the deal more attractive and less risky from the point of view of ABU. In addition, this group of producers is linked to the company importing seed directly from Holland. The importing company also owns its own processing equipment, which it was fully prepared to use to start processing potatoes into final products for consumers in case the prices for raw potatoes were low (which has not been the case recently). These facts also reduce the risk to ABU.

Despite holding collateral on immovable property which should, in theory, cover its exposure on loans, ABU is seeking loan packages which further reduce its risk by having groups of borrowers guaranteeing each others' loans, using mutual guarantees as is often done in microfinance lending.

Key issues surrounding ABU lending are the following: [53]

- All loans have a rate of 10% interest.
- There is a loan arrangement fee of 1%.
- Loans last from one month up to five years, with a maximum grace period of six months.
- A collateral provision of 150% is required, although valuation of collateral assets is often a matter of some discord, particularly as concerns agricultural property and agribusiness equipment.

7.4.2 Microfinance Institutions

A number of microfinance programs are operating in Kosovo. Most loan guarantees are based on group guarantees of loans to members of the group. However, some of the institutions are attempting to reinforce their position by requiring pledges on whatever collateral borrowers have available. It should be noted that FINCA was one of the founding members of KCIS. Blocked borrower savings with the microfinance institutions also provide some guarantee in case of default, in addition to any moveable property that may be registered. Portfolios of principal microfinance institutions for the third quarter of 2003 were as follows:

- Kosovo Enterprise Program €5.9 million
- FINCA Kosovo €3.8 million
- CARE/ADIE International loan €2.7 million

[53] Based on Hammond, October 2003.

- Agency for Finance in Kosovo €1.3 million

7.5 Moveable Property as Collateral

The first step in establishing moveable property as a pledge for loans came through the creation of the KCIS. KCIS started out as a credit bureau used by the five leading microfinance institutions including FINCA, Kosovo Enterprise Program, and Raiffeissen Bank (formerly Kosovo Business Finance Fund and later the American Bank of Kosovo). By now, KCIS is used extensively by most lending institutions in Kosovo to share client information on a centralized database for credit reference checks on loan applicants. Banks and microfinance institutions report their loans to the database and check what loans or other information other lenders may have on a prospective borrower. Initially, some banks were reluctant to use the services of KCIS for cost reasons and fearing possible loss of clients to other banks. But eventually, all banks came to understand the usefulness of the system and most are making use of KCIS to vet clients and check their credit histories. However, some local banks continue to make loans without reporting them to KCIS, which decreases the effectiveness of the service to institutions using the system.

A moveable property registry has been set up in conjunction with the KCIS credit bureau. Since 2003, banks have requested sequestration, using the new 2001 regulation (2001/5) on pledges, which has proved to be very effective. Banks take pledges on items it believes to be of importance to the borrower. Vehicles, machines, and even animals (by number and type, but not individual identification) are registered with their respective serial number and photos are taken. Certain items cannot be taken (bread ovens, for example) because they do not have serial numbers.

Moveable property is the most common type of collateral used by the banks. If a client does not pay on time, the bank is authorized to seize moveable property and thus to force repayment much more quickly. According to the regulation, the bank itself can simply seize property that it has previously registered, or the registration office can go in its stead. The bank applies to the court and in three days time the court gives a decision to seize property and to send the police. The bank requests guards if it believes that the client will not be cooperative. If the client is cooperative, the bank staff goes without escort. For seizures, both the courts and the police are supportive; one bank has made 30-50 requests for seizures to date. The pledge means that either the borrower pays, or the bank is empowered to threaten and, if necessary, seize moveable property.

If the borrower needs more time, the banks normally give him the time he asks for (usually a week or two). Judges may also make a settlement at the court at the time of request for seizure and, if a person needs a week or two or even more, the court grants him the extra time. If at that deadline the borrower fails to pay, the bank sets a

date for the next sequestration to take place. On that day, the bank goes with the court; if the borrower still needs additional time (another two weeks), he is usually given the time. Only after the second extension has expired do the bank and court return to seize the assets.

Neither the courts nor the banks want to seize pledged assets the first time a problem arises. The banks are not interested in physically acquiring pledged items that they sometimes have problems selling; they want the money. The presence of the court makes the matter more serious. Usually, during the course of this process, the borrower comes up with the money and pays what is owed on the loan. This, of course, is the outcome that the bank wants in the first place.

The branch of one international bank in Prizren reported that it had already recovered some items by staff seizure of pledged moveable items with the help of the police.

In addition to moveable property collateral, banks always require co-adaptors (spouses of the borrower) to co-sign and usually take guarantors even when the loan is properly covered by collateral. The goal is to have as many pressure points as possible on the borrower to encourage repayment.

7.6 Immovable Property as Collateral

Mortgages are recorded in the same way as property transfers. An agreement made by concerned parties is verified and archived by the court. No special registry books are kept in most municipalities, but some courts and cadastral offices do keep a record of mortgages that are filed, and they are able to keep property possessors from filing duplicate mortgages.

A new mortgage law was passed by Law 2002/4 of the Assembly of Kosovo on 17 October 2002.

UNMIK Regulation 2002/21 of 20 December 2002 promulgates the new law on mortgages with the understanding that implementing regulations will be issued to protect borrowers and third parties affected by extra-judicial foreclosure. The law states that mortgages on land property apply to the entire parcel, but mortgages on apartments only apply to the individual apartment. All buildings found on a parcel of land that is mortgaged are subject to the mortgage provided they have the same owner or user. Mortgages are valid under the new law once registered, but the registration procedure and the registry itself has not yet been established. Mortgages are extinguished within 15 days of fulfillment of the obligations.

The mortgage grants the mortgagee the business authorization to sell the property without recurring to the courts in the event of default as defined in the mortgage.

This business authorization to sell must be contained within the mortgage document. The law empowers the selling agent to take a commission for the sale not to exceed 1.5% of the sales price. Thirty days before non-judicial foreclosure, the debtor must receive a notice of default and of the prospective sale of the property. The minimum bid on such a sale will be equal to the value of claims registered against the collateral of the mortgage. The borrower can stop the sale by paying money outstanding on the loan within five days before the sales date. Sales should occur not earlier than 45 days and not later than 90 days from the date of registration of the notice for sale.

The proceeds of the sale, in order of priority, go to pay:

- any outstanding taxes or fees on the property,
- the cost of the sale,
- the amount of the debt and other amounts owed the mortgagee,
- amounts due on junior liens (perhaps second mortgages), and
- the remainder paid to the mortgagor.

If the amount of the debt and other amounts owed the mortgagee is not sufficient to satisfy the amounts due the mortgagee, he can take whatever judicial steps necessary to recover the additional amounts owed.

Thus far, the new mortgage law has not come fully into effect. An IPRR was supposed to be established, but so far that has not happened. Without the registry, the law is not being applied in many municipalities. Several banks and courts do not understand it and are not using it. The idea behind the law was to make it easier for banks to realize their interest in mortgaged collateral; under present law, including the appeals process, it can take two or three years to obtain and execute a judgment against immovable property. Once it comes into full effect and is clearly understood, the law should encourage banks to make more and larger loans.

Initially, mortgages on apartments were not originally possible. This situation went on for two years. Finally, Raiffeissen sent a letter to UNMIK requesting authority to take mortgages of apartments as collateral. On apartments, the bank can never be 100% sure of clear possession rights. The bank reviews the borrower's contract that states he has bought the apartment before 1990. The bank checks that the borrower in fact had the opportunity to buy the apartment. It also requires the invoice that he bought apartment and that it is in his name, receipts from the municipality showing payment of property tax in the borrower's name, and electricity and water bills. All this evidence is reviewed in an attempt to be sure that the apartment really is in his name. If there are intervening sales in between, the bank follows the chain back to the original purchasers. Except in one case of forgery of court and cadastral documents in Pristina, one major bank has never had any problem with real estate

given in mortgage. Thus for this bank, there has been only one case in 4,000 of problems with immovable property guarantees.

One type of mortgage that is currently not possible could facilitate the construction of apartment buildings. Banks cannot mortgage new apartments that are under construction, and can only take mortgages on them once they have been put in the name of the owner. Contractors building the apartments do not want to put in the name of the prospective owners. Instead, the contractor collects the first installment of at least 40% up front, and then collects two additional installments (30% when the walls are up and the final 30% when everything is finished). Then the apartment is put in the name of the new owner; contractors will not put the apartment in the name of the owner until they get the final payment of 30%. Only when the apartments are finished is an occupancy license granted and, at that point, banks are be willing to sign a mortgage agreement using the apartment as collateral. In two municipalities (Peja and Gjacova), apartments are registered in the cadastral office; as time goes on, it is expected that more municipalities will modify their cadastral systems to include the registration of apartments.

Problems in Serbian territory in the north are different in that parallel courts are operating. Serbs prefer their own courts and not the UNMIK court. As a result, they register real estate in the Serbian parallel court. People go to the Serbian courts because they are functioning and accessible, even though UNMIK does not recognize these courts. UNMIK courts in Mitrovica do not do repossessions and do not have much power. Serbian courts do provide banks with police escorts for executing their judgments.

There is an issue of valuing the property offered for mortgage. Banks rely on property tax evaluations done in the past two years, but not all properties have been evaluated. Such evaluations are in effect a third party evaluation. The owners do not want to pay too high a tax, so they have an incentive to make sure it is reasonable. However, in some places banks have access to municipal evaluations but do not find them credible. One bank has created a committee of three people to evaluate the property before filing the mortgage with the court. This committee takes the purchase price, current market value, and an estimate of what the selling price. Then they take an average and submit that to the court as the value. The court needs that kind of evaluation to file a mortgage. Costs for registering a mortgage vary from court to court. In Peja, the cost is 1/1000th of the mortgage amount (for example a €150,000 mortgage would cost €150); in Decan, fees range from €50-€100, depending on the amount of the mortgage.

Outside of Pristina, banks rely heavily on the municipal valuation for tax purposes, based on the square meters of the building. Such valuations are determined by a person from the MCO and people from the municipality who have actually visited the property. The valuation varies on location and type of construction. Each flat is evaluated when a bank wants to file the mortgage. The land itself is not taxed nor is

it valued for tax purposes; regardless of the legality of their construction, only buildings are taxed based on tables established for that purpose based on their size, type of construction, and the zone in which they are located.

7.7 Property in the Transition toward Production-oriented Lending

Within the past year, there has been a shift in lending toward more lending for production-related purposes. Lines of credit have been made available by *Kreditanstalt fur Weideausbaum* and other sources to banks to provide longer-term funds needed to make these kinds of loans. Most deposits are short-term and are not suitable to finance longer-term lending. Such loans will for the most part be for larger amounts as well as for longer terms. Financing production is inherently more risky than short-term loans for trade, which has been the mainstay of lending so far. Therefore, despite the quality of their loan analysis focusing on the costs and cash flow of the projects being financed, banks will continue to require collateral guarantees based on moveable and immovable property.

The major problem for using property for collateral remains the failure to clear up inheritance issues. As shown elsewhere in this report, the legal establishment has ways of dealing with these types of problems. A high percentage of borrowing is now done using property registered in the name of guarantors as collateral. As time goes on, it appears likely that a higher percentage of properties will be registered in the name of the real possessor, in order to facilitate borrowing and transforming the borrower's equity into funds to invest for productive purposes.

In two municipalities (Peja and Gjakova), the MCOs have modified the cadastre to allow for the registry of apartments, which is dramatically facilitating their use in these municipalities as collateral for loans. It is expected that this innovation will spread to other municipalities, and thus facilitate lending based on the value of apartments.

The mortgage law has been passed but in many municipalities no registry has been set up, meaning that the law cannot be applied. Either a new registration office must be set up, or the cadastre office needs to take on this function. The non-judicial procedure for sale of mortgage property to settle loan defaults would be better for the banks and would encourage them to make larger loans for productive purposes.

Another issue needing to be settled to increase lending is greater clarity on the part of the courts with respect to second mortgages. At present, some courts allow banks to file second mortgages on their own mortgages; however, none so far allow them to file second mortgages on mortgages of other banks. Allowing such filings would contribute to more bank lending for productive purposes.

8.0 Immovable Property Markets

8.1 Sales

Data on sales of immovable property for all of Kosovo are not available directly from the court records because the municipal courts only tabulate "uncontested court actions," which may arise from a variety of sources, including the validation of the identity of parties involved in property sales. The number of cases filed in this category actually fell by more than 17% in the past year. This could be an indication of inefficient registration systems—there is quite a backlog—except that the number cited refers to cases filed with the courts, not the number resolved. It could also be due to a decline in other types of "uncontested court actions," like applications for name changes, as many Albanians are changing their "Serbianized" names back to Albanian. This process may be ending, causing "uncontested" court decisions to decline. Court officials have the impression, however, that property sales have either stagnated or in fact declined this past year.

In addition to the court information, Skender Tullumi (a cadastral specialist who worked with the assessment team) gathered detailed data concerning property transactions in the Gjakova Municipality. He derived the information from a census of all transactions recorded in 2002 and 2003 in the Gjakova MCO change books, including sales, mortgages, inheritances and gifts for land parcels as well as for apartments. Data on 2004 mortgage agreements is also available.

There were 254 sales of land parcels on which a house was located, and 118 sales of apartments, so that about 60% of sales involved housing in some way in these two years.

8.1.1 Apartment Sales

The Tullumi data permits analyses of the number of apartment sales as well as changes in prices per square meter for apartments in Gjakova between 2002 and 2003. (Outlying cases were checked and the data correctly reflects the officially recorded information.)

Table 7: Price per Square Meter and Number of Apartment Sales in 2002 and 2003

Year of Transaction	Mean Price/m²	Number	Standard Deviation
2002	445.45	79	213.8
2003	420.48	35	128.8
Total	**437.78**	**114**	**191.5**

Source: Tullumi, op. cit.

There were many fewer sales of apartments in 2003, and the average price per square meter was slightly lower in 2003 than in 2002. The variation in the prices paid is high, however, indicating that further study of the factors affecting prices of

apartments should be done to try and explain why some properties are so much more valuable than others.

8.1.2 House and Yard Sales

Data also permit analysis of changes in the number of sales and changes in prices per square meter for houses and yards in Gjakova, between 2002 and 2003.

The sales of house/yard parcels were separated from sales of house/yard parcels that also contained other types of land involved, as well as from sales of other types of properties. The number of such sales and the prices paid for these "residents only" parcels are shown in Table 8.

Table 8: Number of Sales and Price per Square Meter for House/Yard Parcels in Gjakova

Year of Transaction	Mean Price/m²	Number	Standard Deviation
2002	128.05	143	96.4
2003	170.84	63	158.5
Total	141.14	206	120.16

Source: Tullumi, op. cit.

As for apartments, the market for house plots is much less dynamic in 2003, although the price per square meter for a house plus yard is substantially higher in 2003 than in 2002. It would be interesting to explore why the house/yard parcels are higher priced and apartments are about the same as in 2002. The variation in house/yard parcel prices is high, and deserves further study.

The dynamism of residential housing markets depends on the location of the transacted properties. Table 9 below shows the data on house/yard parcels by cadastral zones throughout the municipality (there are 70 such zones).

Table 9: Number of Sales and Prices per Square Meter for House/yard parcels by Cadastral Zones in Gjakova

Cadastral Zone	Year of Transaction	Mean Price/m²	Number	Standard Deviation
7	2002	59.2	11	42.3
	2003	81.5	2	41.8
	subtotal	62.7	13	41.3
22	2002	169.7	70	115.3
	2003	215.0	40	181.2
	subtotal	186.2	110	143.7
23	2002	98.4	51	48.9
	2003	97.6	20	55.9
	subtotal	98.2	71	50.6
26	2002	71.2	10	32.4
	2003	47.2	1	.
	subtotal	69.0	11	31.6
60	2002	49.5	1	.
	subtotal	49.5	1	.
Total	2002	128.1	143	96.5
	2003	170.8	63	158.5
	Total	**141.1**	**206**	**120.2**

Source: Tullimi, op.cit.

Practically all of the house and yard sales in these two years were in and around Gjakova City in the urban and peri-urban cadastral zones 7, 22, 23, and 26. In all of these "urban" areas, the number of sales in 2003 is much lower than in 2002. The highest per meter prices were for the "urban center" cadastral zone 22 and the neighboring suburb located in cadastral zone 23.

8.1.3 Sales of Agricultural Land Parcels

See Tables 5 and 6 in Section 6.5 above and accompanying comments for this type of land transaction. Important features of the sales of agricultural land as noted above are:

- the high prices being paid,
- the small parcels being transacted, and
- the high variability of sale prices.

Within these markets, there are some properties that sell for substantially more than others of the same type. For land parcels classified as agricultural, the mean sales

price for the two years was €15.5 per square meter, while half of the sales were for nine or more Euro per square meter, and 30% were for 19 or more Euro per square meter. Clearly, agricultural land is being sold for more than it can produce agriculturally. This phenomenon probably means that its use after sale will be for building or other non-agriculture, higher-value purposes. It is also possible that many buyers have plans for that non-agricultural investment on agricultural land but will use it for agriculture for a time. It is also possible that people are looking for land to buy to protect their cash from detection or devaluation, and are relying on continuous increases in land values.

The apparent stagnation in property sales identified in interviews and in the Gjakova data could be due to constraints derived from unclear documentation of property rights and the confused legal framework relating to property. It also may be due to overbuilding in comparison to demand for housing unit markets (including agricultural land to be used for building). The large number of houses that are being left unfinished supports this interpretation. Other interpretations are that the flow of remittances is slowing, that the general economic situation is stagnating, or that the burst in housing construction following the 1999 conflict has run its course. In any case, the trend deserves further analysis and monitoring as an important window into what is going on in the Kosovo economy and society.

8.2 Inheritances and Gifts in Gjakova

The number of inheritances and gifts recorded in the Gjakova MCO in 2002 and 2003 is shown in Table 10.

Table 10: Number of Inheritances and Gifts in Gjakova by Year

Type of Transaction		Year of Document		Total
		2002	2003	
Inheritance	Number of Transactions	205	123	328
	% within Type of Transaction	62.5%	37.5%	100.0%
	% within Year of Document	73.2%	66.8%	70.7%
Gift	Number of Transactions	75	61	136
	% within Type of Transaction	55.1%	44.9%	100.0%
	% within Year of Document	26.8%	33.2%	29.3%
Total	Number of Transactions	280	184	464
	% within Type of Transaction	60.3%	39.7%	100.0%
	% within Year of Document	100.0%	100.0%	100.0%

Source: Tullimi, op. cit.

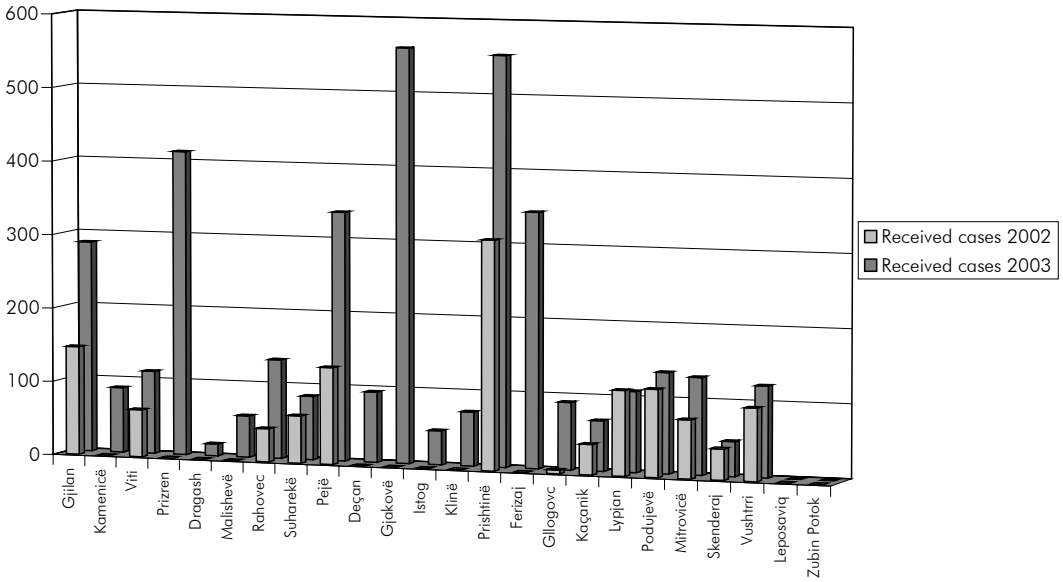
The number of gifts seem to be holding up from year to year, but the number of inheritances has dropped dramatically in 2003 in comparison with 2002. Since the death rate is slow to change, the lower number of inheritance cases processed in 2003 compared to the previous year may be due to a slowing in court processing of inheritances. The population of the Gjakova Municipality was estimated in 1998 to be around 132,000, and an estimated death rate due to old age was estimated to

be around 3-4% per year. It would appear that a rate of less than 0.1% means that many families are not formally recording inheritances. Where the land market is not very active, people are in no hurry to deal with the legal system and to register their inheritances.

8.3 Mortgages

The number of mortgages filed with the municipal courts has increased from 1,259 in 2002 to 3,907 in 2003. Although this increase varied by municipality (see Figure 2), data available from Pristina municipality point to an accelerating growth trend. More than 42% of the mortgages filed in Pristina in 2003 were filed in the final quarter of the year.

Figure 2: Immovable Property Mortgages Filed with Municipal Courts



Mortgages in the Gjakova Municipality based on the new law were begun in 2003. During that year there were 562 mortgage loans recorded using immovable property as collateral, for a total of €19,277,892 lent.

Table 11 shows the mortgage contracts that have been recorded in the Gjakiovo MCO in the first two months of 2004.

Table 11: Number of Loans and Amount Loaned with Immovable Property Mortgages, Gjakova (January and February 2004)

	Number	Total Amount Loaned
Bankë Economike	12	€655,000
Kasa Bank	6	€130,000
ProCredit Bank	11	€342,000
Raiffeisen Bank	12	€712,000
Banka e re e Kosovës	1	€50,000
Unknown	1	€5,000
Total	**43**	**€1,894,000**

There is no way of knowing whether the rate of mortgage lending will remain the same for the remaining 10 months, but if so, there would be approximately 258 mortgaged loans, for a total of €11,364,000. Both the number and amount of mortgaged loans would be down in 2004 from what was done in 2003 in Gjakova.

Many of the loans are by small business owners who have taken out loans to finance business start-ups or expansions. When asked how they are financing their investments, several pointed to bank loans. Asked how they came up with the collateral required by banks to receive loans in Kosovo, they said they had mortgaged their own house or land (see "Juro Fungo" text box). As in the Juro Fungo case below, many businesses do not own but lease business premises, and therefore the businesses do not have assets of sufficient value to guarantee loans. Their owners are forced to mortgage their houses and other property to guarantee business loans.

Thus, immovable property mortgages on land and other property allow businessmen to harness their personal equity to finance business investment and to provide working capital for their businesses. The value of land, houses, and apartments is being put to good use as collateral for business loans.

As mentioned in previous sections, Kosovar banks have only recently started making larger loans and providing

Juro Fungo

Juro Fungo is a small business that grows and exports high-quality mushrooms. They were helped in locating new sources of seed and in marketing by Kosovo Business Services, a USAID-funded contractor. They now import their raw material from Hungary and market most of their output as fresh produce domestically, drying or freezing the rest for export. They truck their product to Serbia, from where it is sent to Germany and Italy by land and air. They performed a "strengths, weaknesses, opportunities, and threats" (SWOT) analysis of promotion costs and competition prior to taking out an 18-month loan for €15,000 at a 13% interest rate to help finance their investment in the business. The commercial bank did not ask for a business plan during the loan application process. Instead, the bank required collateral, so the business owner mortgaged his house.

Juro Fungo's premises are in an unused building of an SOE, which the company has leased for two years (through January 2005). They do not know what would happen should the SOE be privatized, although they would like to buy their building if they were offered the possibility of bidding on it.

longer loan terms. Arrears rates are currently less than 1%, but are expected to rise as banks move from lending to the best possible borrowers to more risky borrowers and to larger and longer-term loans which inherently entail more risk. Under the previous mortgage law, seizing mortgaged property involved a long and uncertain legal process. The new law, once fully operational, allows for non-judicial seizure and should significantly reduce bank risk and encourage lending backed by mortgage security. Banks have been reluctant to lend where loans are guaranteed solely based on agricultural land as collateral. The value of this collateral is often hard to convert into cash, even after winning a lengthy court process. Moreover, the true value at forced sale of the land is hard to determine *ex-ante*, and cases have occurred where land was grossly overvalued for mortgage purposes compared to the value that could be obtained at the time of its sale.

While banks are being encouraged by BPK to give greater to priority to cash flow lending based on the business plan and proven income of the borrowers and their businesses, banks continue to rely heavily on collateral to keep their loan losses within reasonable bounds. Nevertheless, many of the bankers interviewed by the team confirmed making loans that might not have been fully secured by collateral on moveable and immovable property, but they made the loans based on the confidence and their past experiences with them.

8.4 Land Values and Informal Construction

As reviewed in previous sections, trends in land values—especially in and around urban areas—have skyrocketed in recent years, prompting observers to compare the Kosovo land market with that of Tokyo or Manhattan. Indeed, when members of the assessment team visited the Pristina cadastral office, they were shown registered documents of the sale of an agricultural land holding of less than 200 square meters for €8,000 or around €400,000 per hectare. The data from Gjakova cited earlier for house and yard parcels as well as for agricultural land parcels showed comparatively high prices being paid.

Certainly the demand for land has been liberated following the conflict, with families who have been saving and not able to acquire land for their housing needs finally able to acquire land. Also, given the lack of other clearly profitable and legal investment possibilities, people will look to real estate purchases, especially in a market with rapidly increasing real estate prices.

Over a period spanning several decades and especially since 1999, accommodating changing land use patterns in a normally growing economy meant that the boundaries of land used for urban housing and businesses have been pushed out farther and farther into what had once been zoned as agricultural land. This is a normal process resulting from population growth and urbanization, and is seen in all countries. But if the zoning regulations are not updated and if people

continue to look for opportunities to build housing, one ends up with "illegal" construction on land that is supposedly meant to be preserved only for agricultural use.

In an unknown number of cases of high-priced sales, the seller may have constructed a house or business on the land illegally, and in the contracts of sale these constructions are not noted. In these cases, the sale price represents the value of the land and the value of the improvements, while in the recorded data only the land area is described. The buyer may be able to obtain a discount based on the illegality of the improvements that have been made to the land, but they gamble that the municipality will be unlikely to forcibly remove the improvements. The discount will likely be small.

Investments in informal construction present future costs for municipalities, when residents who have constructed informally begin pressuring for roads, schools, water, sewage, and other infrastructure. In the meantime such settlements can produce threats to public health and safety. A policy prescription appropriate to deal with illegal constructions, however, would not be a wholesale demolition of the illegal improvements. Such a policy would be resisted by homeowners and could end up severely harming the SME sector, which by any measure is the backbone of the Kosovo economy. A preferred policy direction would be to promulgate a transparent and fair process to regularize the tenure of the occupants when appropriate, while pushing the process of urban land use planning and infrastructure investments to respond to the demand for building land.

9.0 Socially Owned Property

9.1 Municipal Claims on Socially Owned Property

As noted above, the tenure form called "socially owned property" has produced some interesting puzzles during the transition of Kosovo into a more market-oriented economy based on private enterprise and efficient land administration. The interactions among municipalities, UNMIK agencies, and SOEs concerning socially owned property and the proper course of privatization within the framework of local self governance have been dynamic. The history of the interactions concerning the SOEs in particular has been instructive.

9.1.1 Municipalities, KTA, and SOEs[54]

When the UNMIK municipal administration began its work in early 2000, municipal administrators tried to bring some order to this sector by formalizing municipal control over the SOEs. In socialist Yugoslavia, SOEs had regular reporting obligations to the municipality. If an enterprise failed to comply with a myriad of self-management rules, it was the municipality who intervened to protect the public interest. Under the 1988 Law on Enterprises, if an SOE "does not use social funds appropriately or does not permanently renew the social funds, does not increase and promote them" or if, by performing business "contrary to the regulations and self-management enactments, it causes larger scale damage to the social community," the municipality had an obligation to take a range of measures. These measures included dismissing the steering board, removing workers from management positions, disbanding the workers' council or disciplinary commission, temporarily restricting the self-management rights of the workers, or appointing a temporary management body.[55]

The period of municipal supervision of SOEs ended, paradoxically enough, with the first municipal elections in December 2000. The establishment of new, democratically legitimized municipal governments generated a whole series of "problems" in the SOE sector. New administrations composed primarily of people from one political party moved to replace enterprise directors appointed by their main political opponents. The scene was set for a potentially dangerous struggle for control by different elements across the Kosovar political spectrum. These confrontations forced UNMIK to define a more active policy.

The policy that emerged in early 2001 had three main features. First, it involved excluding all municipal control over the SOEs. A memorandum concluded in

[54] Based on Lessons Learned and Analysis Unit of the EU Pillar of UNMIK , "The Ottoman Dilemma: Power and Property Relations under the UN Mission in Kosovo," Pristina, 8 August 2002.
[55] Law on Enterprises, 1988, Article 79.

February 2001 between the Department of Trade and Industry (DTI) and the Department of Local Administration (DLA)[56] asserted (mistakenly, as it transpired) that the applicable law "provides no authority to governmental bodies, at any level, to manage SOEs."[57] Second, to resolve disputes over the management of SOEs, DTI revived the institution of the workers' council as the chief executive body, elected by the workers' collective as a whole. When necessary to resolve specific disputes, DTI resorted to interim international administration over particular enterprises to prepare the way for workers' council elections. Third, DTI and DLA jointly began to look for investors interested in leasing SOEs under concession agreements, as a provisional strategy to attract investment and create jobs until such time as the way was cleared for real privatization.[58]

DTI was never fully autonomous in these policy choices. The power to intervene in SOEs remained the preserve of the SRSG himself, and DTI was required by its founding regulation to seek in every case a "determination by the SRSG that a specific SOE shall be administered by UNMIK."[59] Even though UNMIK had no other mechanism than DTI at its disposal to respond to enterprise-level disputes, the Office of the Legal Advisor proved decidedly reluctant to authorize DTI's intervention in many instances. This division of powers and responsibilities generated an institutional vacuum within UNMIK in exercising its trusteeship role.

This somewhat half-hearted attempt to restore workplace democracy has had two unintended consequences for future policy in the SOE sector. One is that it has strengthened the most conservative elements in each enterprise, almost guaranteeing resistance to future reforms. The evidence of this resistance can be seen in the results of commercialization. All 12 successful concession agreements were concluded with companies where no workers' council election had been held. Conversely, wherever a workers' council was in place, it invariably moved to block the conclusion of a concession agreement, unwilling to yield its newly restored authority to an external investor. Cases where an elected workers' council rejected the approach of an investor selected by a tender committee include FAN Zahir Pajaziti (Podujevo), Eurometal (Ferizaj), Morava e Binces (Gjilane), Ramiz Sadiku (Prizren), and the Trofta Fish Farm (Istog).

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[56] The DTI and DLA were part of the initial UNMIK administrative structure.

[57] The DTI memo refers to the Law on Enterprises as it was amended in 1990, as part of a series of legal reforms leading to the corporatization of SOEs. In fact, the applicable law was the original 1988 SFRY text, which contained the provisions on municipal control of SOEs quoted above. This mistake led to considerable tensions and misunderstandings between UNMIK and municipal administrations.

[58] To implement this strategy of "commercialization," UNMIK Pillars 2 and 4 collaborated in establishing regional Business Transformation Teams who were responsible for identifying promising candidates for concession. They included representatives from the UN Regional Administrations, DTI, DLA, and Business Management experts seconded by the Canadian International Development Agency.

[59] UNMIK Regulation 2000/63, Section 2.2.

The other effect was to raise the expectations of the workers' collectives as to the benefits they will eventually receive from privatization. In early 2000, in an attempt to win approval from the UN for privatization, DTI briefly argued that SOEs in some sense already "belonged" to the workers, and were therefore not state property at all. This argument was later shelved. However, Yugoslav self-management always produced a strong subjective sense of ownership on the part of workers. Their monthly pay slips indicated a large gross salary, followed by a long list of deductions for taxes, charges and allocations within the company. As a result, the workers came to believe that their own funds were being used to build the company. On the eve of a long-awaited privatization process, the reconstitution of workers' collectives has created the expectation that workers are to become the new captains of industry in Kosovo. These expectations must eventually be shattered. When that happens, UNMIK may find itself in serious conflict with the very structures it has worked to restore.

Together with workers' council elections and direct administration, DTI had a third arrow in its quiver of strategies toward the SOEs. Because of opposition from the UN Legal Office toward any overt privatization scheme, DTI together with the DLA devised the alternative of leasing out SOEs to private commercial interests, a policy that became known as "commercialization.[60]" It was intended as a means of attracting fresh capital into the SOE sector and creating new employment, without addressing the complex problem of ownership of SOEs.[61]

The main features of the commercialization strategy were as follows. DTI offered lease contracts of 10 years over selected SOEs through public tender. The successful bidder undertook to pay an annual concession fee and to make a series of capital investments in the company. The concession agreements also included obligations to retain the workforce, invest in training programs, and share future profits with the workers. The relatively modest revenues from the concession agreements were not put into the Kosovo consolidated budget, but placed on trust to resolve future ownership claims against the company. The concession agreements give the lessee preferential rights in any future privatization process. However, if privatization does not take place, the lessee has no right to recover the costs of its investment in the company. According to rules issued by Central Fiscal Authority in 2000, while the value of an SOE under concession may not be decreased, any increase in value must not raise an obligation on the part of UNMIK to pay for the investment.

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[60] The experience with commercialization is examined in more detail in a forthcoming LLA-ESI report.

[61] "Concessions may be granted for a wide range of commercial activities, including without limitation, mining and quarrying; construction and operation of buildings, roads, railways, air transport facilities and other transport facilities, or oil and gas pipelines, facilities and outlets; public utility and telecommunication facilities; agriculture, water management and supply facilities," Finance Administration Instruction 1999/2, revised on 15 December 1999. See also Finance Administration Instruction No. 5/2000 on Concessions, 5 July 2000.

In total, of more than 330 SOEs then known to DTI, only 65 were put to tender for commercialization by the end of 2001. Investor interest was generally low. Only 34 tenders attracted a credible offer; of these, only seven attracted more than one bid. In the end, 12 concession agreements were concluded, the latest (Minex) in February 2002. Since then, although DTI has continued to announce tenders, no further concession agreements have been signed by UNMIK, and the policy now appears to be abandoned.

Under the applicable law (the 1988 Law on Enterprises), it is unlawful for SOEs to rent out socially owned assets. If they fail to use the assets for the purpose for which they were allocated, and especially if they abuse social property by using it to generate illicit private income, the user rights can be cancelled.

Extracting individual assets from SOEs by canceling user rights could be accomplished far more rapidly and cost-effectively than either privatization (spin-offs) or liquidation. Under the applicable law, the municipality has the right to allocate socially owned property on its territory. If the user right is cancelled, the allocation right reverts to the municipality. As the municipality has an obvious interest in reasserting its control over the property, it would be a natural ally of the KTA. The responsible municipal body (namely the office for property legal affairs) could perform the task of investigating where socially owned property on its territory is no longer being used by the SOE that holds the user rights.

If appropriate, the KTA could be given a supervisory role to guard against unwarranted interference by municipalities in viable SOEs. The procedure might, for example, require the municipality to request approval from KTA before canceling the right of use. The KTA could use its authority as trustee of social property to consent to the municipality's proposal on behalf of the SOE.

In practice, this would mean that current lessees of SOEs would become tenants of the municipality. This would bring a number of advantages. Most importantly, it would create the possibility for standard lease terms set out in municipal (or KTA) regulations. These might include fixed rental rates according to urban zones, minimum notice periods and legal rules governing protection of investments in property made by tenants. It would immediately terminate the anomalous practice of private tenants being forced to hire unproductive SOE workers. These benefits would go a long way toward improving the climate for private business development.

Removing the source of illegal subsidies from SOEs would carry significant benefits for the KTA in carrying out its tasks. First, it would help to determine which SOEs have viable core businesses, and which have nothing left but their real estate. Second, by removing the illicit cash income, it would take the heat out of struggles for control of SOEs. Once this property is removed from SOEs, both privatization and liquidation are likely to encounter far less resistance.

9.1.2 Municipalities and Land Administration: Competing Concepts

The UNMIK Regulation 2000/45 on Self Governance of Municipalities in Kosovo, Section 3, "Responsibilities and Powers of Municipalities" defines the following municipal competencies related to land administration:

a) Urban and rural planning and land use
b) Licensing of building and other development
c) Implementation of building regulations and control standards
d) Local environmental protection
e) Management of municipal property
f) Provision of social services and housing
g) Management of fairs and markets
h) Provision and maintenance of public parks, open spaces, and cemeteries
i) Management of buildings and lands used for pre-primary, primary, and secondary education, as well as primary health care

This definition of municipal responsibilities at times clashes with the initiatives of the KTA to privatize SOEs, when parts of the land and buildings used by those enterprises is needed by the municipalities to carry out its self-governance responsibilities.

During the Yugoslav years, municipalities had the main responsibilities for several land administration activities:

Land Use Planning

The municipal councils developed plans for the use of construction land within the boundaries of the urban planned areas, typically the main villages, towns, and cities within the boundaries of the municipalities. Plans were based on maps showing the main roads and constructions of the municipal center and other main urban settlements. Specific map plans at larger scales were made for specific areas of the urban planning area. Many municipal directorates of urbanism/planning are still using these map plans which were prepared in the 1960s and 1970s.

Expropriation of Private Property

The councils expropriated privately held lands and buildings upon the requests of enterprises and social organizations of various sorts, based on the needs by these organizations for carrying out their functions, including space for buildings and facilities for these organizations. The following translation was done of an expropriation decision in the city of Vushtrri to acquire land for the *Bashkesia Veteqeverisese e Interesit* (Self-governing Community of Interests, BVI) to build an

apartment building. While not using the term, the decision transformed the private possession of the land and buildings affected by the expropriation into social property, for the use of BVI. The decision also shows the consideration of objections from the private holders of houses and land in the affected area against the expropriation. In some cases such objections went to the municipal court for hearing. The text of the decision follows:

> The Directorate for Legal Property Relations of the Municipal Assembly of Vuçiternë, while deciding according to the proposal of the Public Defender of the Municipality of the Vuçiternë, for expropriation and transfer of the usage rights of the civil immovable property to the Municipal Assembly of the Vuçiternë, according to the section 15 in connection with section 14 of the Expropriation Law ('Official Gazette of KSAK", number 21/78), and section 202 of the General Administration Procedure Law, brings out the:
>
> Decision:
>
> Expropriation and the transfer on the favor of Vucinterna Municipality for the needs of BVI for inhabitancy in Vuciterne, of the immovable property currently on the civil ownership in the Municipal Assembly of Vushtrri, for construction of the inhabitancy object in the location "Kalaja" of the following owners:
>
> I. ISAK LLAPASHTICA, from Vushtrri, "M. Tito" Road Number 44, the immovable property registered in the possession list number 483, written as a cadastral parcel number 594, house with the surface of 205 square meters and yard with surface of 0.03.94 hectares and the cadastral parcel written with the number 605/3 containing a house with the surface of 144 square meters, and yard with the surface of 0.05.00 hectares and agricultural land of the second class with the surface of 0.00.48 hectares with other objects.
>
> [The document continues with owners-users names and descriptions of six other properties that were expropriated]
>
> II. Owners-users from the section I of the disposition of the decision, should hand in the upper mentioned immovable properties to the user of the expropriation, immediately after the approval of this decision.
> III. Municipal Directorate of the Geodesy in Vushtrri, will do the changes in the cadastre records for the expropriated immovable properties, after the approval of this decision
> IV. Compensation for the expropriated properties- transferred, will be set after the approval of this decision.
>
> Argumentation
>
> The Public Defender of the Municipality of Vushtrri, with their proposal number 7/85 from October 14th 1985, on the request of the BVI for housing from Vushtrri, has requested the expropriation and the transfer of the usage right of the civil immovable properties mentioned in the section "I" of the disposition of this decisions, for constructing of the apartment building in the location of "Kalaja" in Vushtrri.
>
> The Legal Property Relations Director attached the necessary evidence:

Decision of the urban plan approval of the central movement of the city of Vushtrri, proof from the social finance service that the budget was allocated for the compensation costs, possession lists and the current sketch of the field.

During the implementation of the procedure, there have been declared all the owners that were against the expropriation proposal except Selajdin Keres, Ismail Sh. Gergurit and Jakup M Keram that were not against the proposal, but, requested reasonable compensation and shelter allocation.

The declared owners that were against the proposal for expropriation, requested housing and land, apartments, stores and cash compensation, mentioning that the inheritated houses were built for their family needs, so the expropriation proposal is not right.

While reviewing the properties and carefully evaluating the declarations of the identified owners, this Directorate found out that the conditions were fulfilled from the section 8 of the Expropriation Law of the RS of Serbia, and 12, 14 of the Expropriation Law of KSA of Kosova, and as mentioned before it was decided as in disposition.

Legal counsel: Against this decision unsatisfied entity could file a complaint within 15 days from the day of receiving this, through the Directorate for Legal Property Works in Pristina.

This decision of the Directorate for Legal Property Relations of the Municipal Assembly of Vushtrri, number 462-20, on the date of 11.03.1986

Signed by the
Director of Directorate

Contribution of Municipal Funds

In the past the councils have contributed funds from their budgets for the construction of buildings and other facilities needed for the economic and social functioning of enterprises and other local social organizations. In the city of Pristina, all of the households of the city were convinced to contribute money to a fund for the construction of a sports complex.

Municipal officials claim that municipalities have a share in the ownership of socially owned buildings. They cite the fact that, in the minds of the people if not yet in the law, municipalities share responsibility and involvement in the expropriation of privately held properties and in municipal and local population funding of construction costs of socially owned buildings and facilities. An example of such claims is the following decision from Peja:

According to the section 2, of the law of changes and amendments of the expropriation law (Official Gazette of KSAK, number 46/86), and in the support of the section 48,14 of the UNMIK regulation, number 2000/45, for the self governance of the Kosova Municipalities, Municipal Assembly of Peja, in the regular meeting, held on 31.01.2003 approves this:

Decision

1. It is ascertained, that it is on the general interest the allocation of the location for building the Center for Professional Studies and Continuing Education, that will be placed in the cadastral parcel number 281/8, house culture, with the surface of 0,08,36 hectares, written according to the possession list number 2614 Municipal Assembly of Peja, as a social property- belonging to the Wood Kombinat in Peja.
2. After the approval of the decision, the municipal Administrator in Peja and the Mayor of Peja, will approve the decision for the transfer of the immovable property usage right in social ownership, form the current user Wood Kombinat in Peja in the Municipality of Peja, for needs of the Center for Professional Studies and Continuing Education in Peja.
3. This decision is final in the administrative procedure and does not come under administrative and court review.

Argumentation

Center for Professional Studies in Peja, by the Board of Directors of the Municipal Assembly of Peja, has submitted a request, with that request they request for the building permit of the Center of Professional Studies and Continuing Education for youngsters.
Board of directors in the regular meeting held on 27.11.2002 has approved their Conclusion with the protocol number 03-350/8413/2002, by which conclusion, the request for the mentioned Centre RECOMMENDED it to the Directorate for Cadastre Geodesy and ownership, and Directorate for Urbanization of the Municipal Assembly of Peja, for researching of the location for building of the Center for Professional Studies and Continuing Education.

While implementing the conclusion, Directorate for Cadastre Geodesy and Property has supplied the possession list for the parcel number 281/8, and history of the ownership of this parcel, from which it is clearly seen that the same social property that is used by the Wood Kombinat in Peja, whereas the Directorate for Urbanization has prepared in favor for the planning of the project, from which results clearly that there is no urban obstacles for usage and adaptation of the existing object with the dimensions 60,00X7,20 m.

Based on the verified fact and also in the disposition of the section 30, of the law of changes and amendment of the expropriation, Official gazette e KSAK number 46/86 that regulates the procedure of the social property transfer, are fulfilled all legal conditions to determine the general interest, as it was described in the disposition of this Decision, that is why it was decided as in disposition.

01.Number
Peje, 14 February 2003

Municipal Assembly of Peja
Municipal Administrator
Mayor

Municipal Needs

For some municipal functions such as providing land for cemeteries, the appropriate land to be acquired when a cemetery becomes fully occupied is a neighboring

parcel. Where such land exists, is recorded as under the use of a SOE, and is not being used by the SOE for any essential function, the municipality may act to recover a piece of land to add to an existing cemetery. The KTA may find such an action to be unacceptable, since it is attempting to privatize such land to provide compensation to creditors and to attract investors. An example of such a situation from Peja is as follows:

> According to the section 2, of the law of changes and amendments of the expropriation law (Official Gazette of KSAK, number 46/86), and in the support of the section 48,14 of the UNMIK regulation, number 2000/45, for the self governance of the Kosova Municipalities, Municipal Assembly of Peja, in the regular meeting, held on 31.01.2003 brings this:
>
> Decision
>
> 1. It is ascertained, that it is in the general interest the allocation of the location for city cemetery in Peja, that will be placed in the cadastral parcel number 700, agricultural land culture, IV class, with the surface of 0,40,18 hectares, and the parcel number 701/2, agricultural land culture, IV class, with the surface of 0,41,19 hectares with a total surface of 1.86,64 hectares written in the possession list number 438 Municipal Assembly Belo Poje, as a social owned property OPB SHUMTRANSI in Peja.
> 2. After the approval of the decision, the Municipal Administrator in Peja and the Mayor of Peja, will approve the decision for the transfer of the immovable property usage right in social ownership, form the current user OPB SHUMTRANSI in Peja in the Municipality of Peja, for needs of the Islam Community in Peja in order to allocate the city cemetery.
> 3. This decision is final in the administrative procedure and does not come under administrative and court review.
>
> Argumentation
>
> Islam Community in Peja, has submitted request, to the Border of Directors of the Municipality of Peja, and requested for a new allocation of the city cemetery for the Peja city.
>
> Board of directors of the Municipal Assembly of Peja in the regular meeting held on 15.11.2002 has approved their Conclusion, they recommended to the Directorates of the Cadastre, and Urbanization and also for the Ownership Service, to allocate the new location for the city cemetery.
>
> While acting according to this Conclusion, the above-mentioned bodies have implemented their obligations from the conclusion, so the Directorate for Cadastre, Geodesy and Ownership, has supplied the possession list and the ownership history for the parcels that are object of the administrative transfer, whereas the Directorate for Planning, Urban Development, Rural and Environment has prepared in general approval for the project, where was allocated the location for the city cemetery, in the parcels number 700,701/1 and 701/2, with land surface 1,86,64 hectares, and has ascertained that there is no urban obstacles and the above-mentioned property can be used by the Islam Community for the city cemetery expansion.

Bearing in mind the above-mentioned verified facts, and also the ascertaining of the Board of Directors, number 03-463/6875/2002 date October 15th 2002 and also the fact that the conditions form the section 2 and 30 are fulfilled, of the law of changes and amendments for the expropriation, Official gazette of KSAK number 46/86 that is why it was decided as in disposition of this law.

01.Number 463-13192
Peje, 14th Feb. 2003

Municipal Assembly of Peja
Municipal Administrator
Mayor

Reversal of Illegal Takings

In some instances, SOEs attempt to transform themselves into stock companies to claim ownership of property they had been using as an SOE. These attempts are being challenged by municipalities as being illegal, and in such cases the property remains under the administration of the municipalities.

An example of this type of claim, also from Peja, concerns land for a municipal market, and is being presented to the special chamber of the Supreme Court as follows:

Date 06.02.2004
Protocol Number A.P. 021-47-2004
Supreme Court of Kosova
Special room

Accuser:
Municipality of Peja, in Peja

Respondent:
1. Kosova Trust Agency based in Prishtina\
2. Stockholding organization with mixed property "Tregjet" based in Peja

Legal basis: Proving and handing the immovable property
Dispute value: 500,000 Euro

The accuser is the owner and the holder of the property right for the cadastral parcel number 4742/2 with the surface of 0.712.154 hectares with the possession list number 3273 Municipal Assembly of Peja, which is located in the place called (Taphane) and for the moment formally and without legal bases in the evidence of the cadastral books is in the name of the second respondent.

Evidence: Acceptance of the cadastral condition

With the decision 02-06/53 of the date July 23rd 1974 the accuser has foreseen and adjusted the locations of the markets for the city of Peja, the above mentioned decision was approved by the three chambers of the Municipal Assembly on the date of July 23rd 1974. According to the minutes of this meeting the second respondent has

used the possibility to register the upper mentioned disputable cadastral parcel to register as their property.

Evidence: The above-mentioned minutes of meeting

We think that the second respondent did not posses the right and the legal base to register this cadastral parcel as their property on the public cadastral books because with this decision only the allocation of the location and surfaces of the markets was set, by the Municipality of Peja who is competent, and the Municipality did not give for permanent usage or in ownership to the second respondetn. The second respondent was in charge of the supervision the Markets as a Enterprise that was acting in the setting of the Municipality of Peja, and they did the maintenance and the fee collection from their individual users.

Evidence: Faulty Action

Since this parcel without legal base is registered as a property of the second respondent, the accused with the decision number 01-463-8409 of the date June 27th 2003 has decided to take away upper mentioned parcel from the second respondent, but when the first respondent was informed for the decision, it did not accept such a decision with the pretext of saying that this is a Social Stock Holding Enterprise with the mixed property and said that for this issue should be submitted requests to the special chamber (of the Supreme Court) in Pristina.

Evidence: Quoted decision and the request of the KTA

We consider that in this case we do not have to do with the legal subject that has the treatment of the Social or Private Enterprise as the first respondent thought, but we deal with a Stock Holding Society, in the name of which mistakenly and without legal base the disputable parcel has been registered, but since the KTA is involved, we propose that the Court after the implementation of the corresponding procedure to bring out:

Judgment

It is proved that the accuser Municipality of Peja is owner and holder of the ownership right of the cadastral parcel number 4742/2 with the possession list number 32/73 municipal assembly of Peja with the surface of 0.72.15 hectares, KTA based in Prishtina and the SH.A.P.P. "Tregjet" based in Peja, are obligated to accept meantime the second respondent is obligated to give back in the free and factual possession within 15 days according to the authoritative court decision under the threat of the forced acquisition.

The respondents should be obligated also for the compensation of the procedural costs.

Accuser

_____
CEO
Peja Municipality

These examples illustrate a growing concern by municipality officials that the privatization policies of UNMIK are not in harmony with the UNMIK resolutions concerning the responsibilities of municipalities. More fundamentally, such examples show that people in local government are taking their responsibilities seriously and are willing to move to protect what they see as their abilities to respond to the needs of the local population. If this is the case, and there are no other motives involved, this attitude is positive news for those who place great reliance for Kosovo's development on local government institutions.

9.1.3 Municipal Land Areas

The land areas divided into municipalities are shown in Table 12.

Table 12: Land Area in Kosovo Municipalities

Code	Municipality	Area (km^2)
1	Deçan / Decani	371.8
2	Gjakovë / Dakovica	587.6
3	Gllogoc / Glogovac	275.6
4	Gjilan / Gnjilane	515.0
5	Dragash / Dragas	425.9
6	Istog / Istok	453.9
7	Kaçanik / Kacanik	294.2
8	Klinë / Klina	309.0
9	Fushë Kosovë / Kosovo Polje	95.3
10	Kamenicë / Kamenica	522.6
11	Mitrovicë / Mitrovica	336.2
12	Leposaviq / Leposavic	539.1
13	Lipjan / Lipljan	401.2
14	Novobërdë / Novo Brdo	81.2
15	Obiliq / Obilic	104.8
16	Rahovec / Orahovac	276.1
17	Pejë / Pec	602.9
18	Podujevë / Podujevo	632.6
19	Pristina / Pristina	572.0
20	Prizren / Prizren	634.9
21	Skenderaj / Srbica	374.4
22	Shtime / Stimlje	134.4
23	Shtërpcë / Strpcë	247.6
24	Suharekë / Suva Reke	361.0
25	Ferizaj / Urosevac	344.7
26	Viti / Vitina	293.4
27	Vusttrri / Vucitrn	344.8
28	Zubin Potok / Zubin Potok	333.4
29	Zveçan / Zvecan	123.0
30	Malishevë / Malisevo	306.4
Total Area		10,895.0

Kosovo Cadastral Agency, 2003

The land areas in each municipality are distributed among rural and urban areas, where the latter are those lands includes in the urban development plans of the larger settlements within the municipalities. Such plans include land for industries and other non-agricultural user rights that may or may not have been put into practice. Municipal lands are also classified according to whether they are socially or privately possessed. Table 13 on the following page shows how rural and urban lands are divided into social or private possession for five municipalities.

The Municipality of Kaçinik, bordering on Macedonia in the south, with its lack of a large urban center but with 6.2% of its land classified as urban (with more "urban" land than Pristina) illustrates the fact that the classification of land as "urban" does not mean that the land is occupied by typical urban land use. Rather urban land is land within urban development plan boundaries, which in Kaçinik includes large factories such as the cement complex, industrial parks, and other land uses planned for future development. The other four municipalities have urban land classifications more in accord with their settlement patterns.

Another interesting feature of the data is the official classification of 21% of urban land as private property (i.e., land in private possession). There is also wide variation among the municipalities pertaining to the proportion of urban land in private possession, with Rahovec having 69% so classified, and Pristina having about a third of its urban land privately possessed. This finding contradicts the often-repeated assertion that people may privately own their house, but the land under their house is always socially owned. This does not appear to be the case, but bears further investigation.

Table 13: Land Tenure Classification for Urban and Rural Land

Municipality	Urban Land						Rural Land						Total Area
	Social Property		Private Property		Total Urban	% Urban of Total	Social Property		Private Property		Total Rural	% Rural of Total	
	m^2	%	m^2	%	m^2		m^2	%	m^2	%	m^2		m^2
Kaçanik	15,761,527	86.7	2,408,638	13.3	18,170,165	6.2	155,090,040	56.2	120,950,033	43.8	276,040,073	93.8	294,210,238
Lypjan	1,782,964	83.0	366,252	17.0	2,149,216	0.5	317,656,591	79.6	81,291,476	20.4	398,948,067	99.5	401,097,283
Pristina	8,425,399	67.1	4,130,615	32.9	12,556,014	2.2	176,253,413	31.5	383,151,233	68.5	559,404,646	97.8	571,960,660
Rahovec	116,867	30.5	266,040	69.5	382,907	0.1	107,874,043	39.1	168,117,212	60.9	275,991,255	99.9	276,374,162
Obiliq	569,093	98.1	11,209	1.9	580,302	0.6	46,670,235	44.8	57,574,482	55.2	104,244,717	99.4	104,825,019
TOTAL	26,655,850	78.8	7,182,754	21.2	33,838,604	2.1	803,544,322	49.8	811,084,436	50.2	1,614,628,758	97.9	1,648,467,362

Source: Kosovo Cadastral Agency, 20 February 2004. Special thanks to Afërdita Thaçi, Head of DDAD, KCA.

9.2 Disposition of SOE Assets

Data available from a World Bank assessment in 2000 indicate that total rural land area in Kosovo comprises a little over one million hectares, of which around 53% is classified as arable or pastureland, and the remainder as forested.

Table 14: Land Use in Kosovo

Hectares	Area	Total Area
Agriculture	577,000	53%
Arable land	400,000	69%
Pastureland	177,000	31%
Forest	430,000	39%
Public	266,000	62%
Private	164,000	38%
Rural	1,007,000	92%
Urban/Communication	82,000	8%
TOTAL	**1,089,000**	**100%**

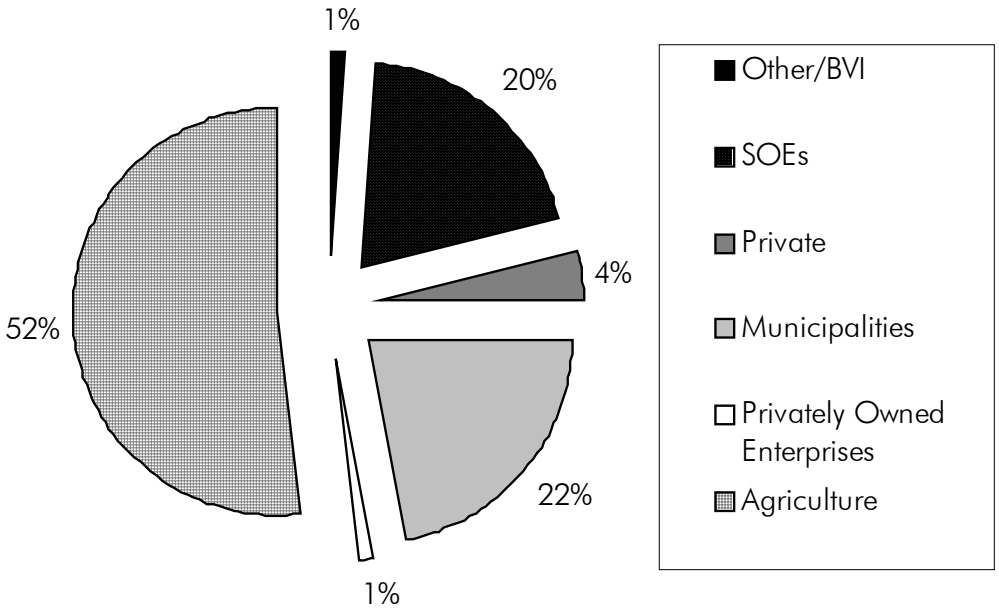
Source: World Bank Assessment, May 2000.

The most frequently cited figures about land usage indicate that about 57% of rural land (comprising some 575,000 ha) is privately held. According to Table 4 in Section 6.0, the remaining proportion of rural land area (43%) is listed under the heading "Socially Owned Property." To consider this property as primarily held by SOEs is an oversimplification, because some but not all of the non-private agricultural land in Kosovo is controlled by SOEs.

The definition of socially owned property is more precisely "non-private," and it includes SOE land, municipal land, and forested land controlled by public sector agencies, publicly owned enterprises (i.e., utilities), religious organizations, and other designations. KCA data confirm that 57% of all land in Kosovo in 2004 is still held privately, while 43% is socially owned property, or non-private tenure forms.

Unfortunately, there is very little reliable information about the disposition of non-private land among the different types of public or social entity in Kosovo. There are a number of reasons for this, the most prominent among them being that the distinctions among the different types of holders of socially owned property have not been clearly drawn. Nonetheless, KCA has been willing to provide the breakdown between private and non-private land by municipality, as summarized in Figure 3 on the next page. As this chart illustrates, the proportion of privately possessed land varies considerably by municipality, ranging from more than 75% in Skenderaj to around 30% in Dragash. Nonetheless, across all municipalities, the question remains of how the non-private land (ranging from 25% to 70% of total land in their territories) is distributed.

Figure 3: Non-Private Land Allocations



Source: KTA, 2003.

The best information available on this question has been put together by KTA, based on a survey in 2003 of all cadastral records pertaining to non-public land in 10 municipalities. This information is summarized in Figure 4 on the next page.

Agricultural and Agribusiness Enterprises

According to KTA, the category "private" refers to the usage of the land designated as "socially owned" but held by private individuals (see below), but represents only 4% of the total records surveyed.

The breakdown of the "non-private" land labeled as "agricultural," comprising more than half of all "non-private" land, is not clear. Such land includes forestland, and can be controlled by SOEs, religious organizations, municipalities, and central government agencies. Getting more precision will not be possible without undertaking a record-by-record inventory in each municipality. In a communication from KTA staff, the following points were made:

> 'It is important to realize that we have analyzed only the composition of users of non-private parcels. These were refined in order to capture the registered 'users' in different categories (municipal, church, SOE (industry), POE, agricultural, etc.) and further specify the use of the parcel (category municipality would have as activity such differing uses as road, school, village council, hospital, etc.).
>
> 'Category SOE would specify the company as we know it today and include agricultural processing industry such as wood combines and canneries (but not primary agriculture or forest).

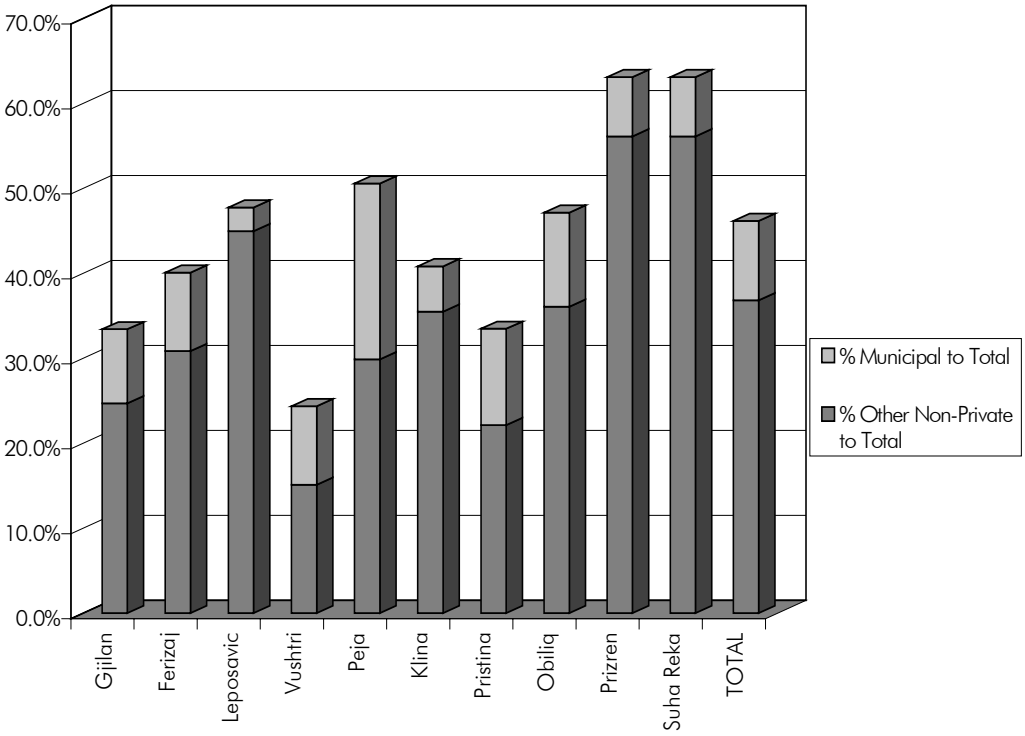
'Category Agriculture would include agricultural cooperatives and other primary agriculture SOEs. (Forests on socially owned land are (also) included in the category Agriculture.

'Much of the non-private land parcels had private persons registered as user and this was entered as a separate category (representing a high number of parcels, but a very low total surface).

'The biggest lesson from this exercise is that there is far more socially owned land than socially owned land in use by Socially Owned Enterprises (Agriculture taken aside, that is).'

EAR has reported that there is a total of 66,000 ha of SOE-cultivated land, of which 22,000 ha are arable. It is thought that perhaps 5,000-10,000 ha of SOE land have irrigation infrastructure in place, although only 1,500 of this is actively irrigated. One SOE alone reportedly has 25,000 ha of land, mostly pastureland. Of 400,000 ha of forested land, 260,000 are non-private land. KTA claims sole authority over the disposition of SOE-controlled forests.

Figure 4: Non-Private Land Area in Proportion to Total Land Area



Source: KTA analysis of KCA Cadastral Records of 10 Municipalities (2003); KCA (2004).

Although the proportion of non-private land controlled by SOEs cannot be determined based on available data, it is possible to present information available from the KTA analysis pertaining to the proportions of non-private land controlled by municipalities. Figure 4 above summarizes this information for each of the 10 municipalities surveyed by KTA in 2003. As this figure illustrates, municipally

possessed land is a relatively modest proportion of total land area in each municipality, averaging just about 9% among the 10 municipalities surveyed. The exception appears to be Peja, where more than 20% of non-private land is controlled by the municipality according to cadastral records.

9.3 Property Rights Issues Relating to SOE Privatization

It is not the purpose of this section—and indeed it falls outside of the scope of work for this assessment report—to review and determine the adequacy of KTA's mandate or implementation. Nonetheless, it is evidently within the scope of this assessment to review and analyze property rights issues pertaining to the SOE privatization process. Among the most salient of these issues are the following:

- Legal limbo of SMEs currently on leased SOE property
- Municipal claims on SOE land
- Other public interest claims on SOE land (e.g., forest conservation, economic impact analyses, and land use planning and zoning)
- Compensation and restitution claims on SOE land
- Expiration of KTA's mandate in 2005

Each of these issues can be said to increase uncertainty and risk for the potential investor, and hence to reduce the amounts on offer for the SOEs being privatized. But each issue also has implications for other stakeholders in the Kosovo economy arising from uncertainty of property rights.

Briefly, KTA was given 18 months to privatize 500 SOEs, of which 28 were agricultural. The original concept was that about 75 SOEs would be divested through the "spin-off" privatization route, under which SOEs, or new companies formed from the main parts of them, would be sold as going concerns. The remainder (basically the vast majority that are inert as businesses) would be liquidated through asset sales to the highest bidder.

"Liquidation" privatization, although it would tend to benefit Kosovar SMEs who are better able to bid on the odd piece of equipment or land parcel than an entire SOE, has never gotten off the ground. In large part this is because of the inability to resolve whether the land assets of bankrupt SOEs would be liquidated as well. The issue relates to the possibility of former owners making a valid claim for restitution sometime in the future on the assets that were liquidated.

"Spin-off" privatization would legally preserve the possibility of valid future claims on the assets privatized arising through the court system or political process. The concept of 99-year leaseholds was developed to allow for this possibility. A 20% cut from the sale of the SOE was reserved for enterprise employees. Remaining funds

from the privatization of the SOE were to be held in a trust fund to be divided among owners (should future compensation claims be upheld) and creditors (including the government for tax arrears, as well as other creditors such as utilities, suppliers, and banks). There would be no lease payments over time; the entire amount from the privatization transaction would accrue based on the original SOE sale. This approach also presents a problem to potential investors since little or no bank financing for these purchases appears to be available and because after years of neglect, in many cases the enterprises require major investments to get them operational. As a result, there has been little interest and amounts offered have been low.

The "spin-off privatization" process has resulted in 24 privatizations, although these reportedly are in various stages of final approval. The trust fund has not yet been set up. The privatization process has stalled since October 2003, and even KTA staff now look at the deadline of June of 2005 for privatizing the SOEs as "hopeless," and that of end-2005 as "ambitious."

In the meantime, KTA has been keeping industrial SOEs on rolling, three-month lease contracts, and SOE farms on seasonal leases. The concept, according to KTA, is to provide additional incentive for rapid privatization of the SOEs.

9.3.1 Legal Limbo of SMEs

Most SME owners who lease SOE land and fixed assets are on three to five-year leaseholds. They face considerable uncertainty regarding the eventual disposition of their businesses. The value of the SME will not be bought out; unless they want to bid on the entire SME, they will be invited to remove whatever machinery and equipment they own. Of course, SMEs are very unlikely to be able to come up with the cash to buy the entire SOE. And, except in the case of small-scale shop fronts, they will not be offered the right to purchase the property and fixed assets they are utilizing. The advent of three-month or seasonal leases will only increase their uncertainty, and indeed will provide incentives for SOE decapitalization through failure to maintain the fixed assets they are leasing.

9.3.2 Municipal Claims on SOE Land

As noted above, all of the municipalities the assessment team visited asserted a prior legal claim on SOE land. This claim derives from the fact that the municipalities were the original entities that nationalized land and property from private owners after World War II. (Note that when this conflicting claim was mentioned to the UNMIK Legal Advisor, he said that subsequent legislation—i.e., UNMIK legislation—superceded all prior legislation in cases where the two were in conflict. He also invited USAID to help with legal advice to sort out where there may be conflicts or gaps in the legislation pertaining to property rights.)

The municipalities also pointed out that key municipal needs could not be met with the current land allocations available to them. Office space was lacking, and municipal officials were housed in SOE office space downtown. They also were concerned about land allocations for other uses (e.g., schools and other public facilities or land on either side of municipal roadways). KTA's position on these claims has been that the municipalities may swap municipal for SOE land, or invoke eminent domain, but they may not bid on SOE properties to be privatized. In some cases, this position has needlessly offended municipal officials. Peja municipal authorities cited the case of a graveyard that they were being asked either to swap land for, or to declare municipal property through invoking eminent domain, which would require them to pay "fair market value."

Another issue for the municipalities related to UNMIK legislation requiring them to come up with land use plans within the next 18 months. The problem is that these land use plans may conflict with the plans of a private business that has just purchased an SOE. If you install a stockyard on the premises of an SOE that you purchased in a "spin-off privatization," and the municipality subsequently zones your land as residential, you have effectively lost value on your investment. This concern could be particularly acute given that in many cases municipal land use plans have not been updated for decades.

9.3.3 Other Public Interest Claims on SOE Land

This basically is the same argument as above relating to municipal land use plans, but it pertains to various other kinds of public interest, such as conservation of forests, protection of river basins and watersheds, soil conservation, environmental impact assessments of such things as mining company plans, and so on. The point is that there are various levels of property rights and interests held in trust for the public by the government, all of which potentially affect the property rights of potential bidders for the spun-off companies of SOEs, and hence the bid price for those spin-offs.

9.3.4 Compensation and Restitution Claims on SOE Property

Restitution is apparently not possible under current UNMIK law. Nonetheless, the 99-year leasehold solution does hold open the possibility that future claims by prior owners may be upheld by the courts, and expects that these claims may be met through the establishment of a trust fund to hold funds from SOE privatization in escrow for the prior owners. But KTA informed the assessment team that no lease payments would be paid over time into the fund. And unless the winning bid prices for the new companies spun-off from the SOEs are quite high, the fact that creditors will be paid from the fund first raises the possibility that there will be little or no money left in the fund for those future claims.

There is an inherent conflict here for potential bidders, because they face hard budget constraints within any given time frame. This means that any funds that they bid for the spun-off company during the privatization process will be equivalent to investments that they cannot make in the new company once they have bought it. Regardless of the risks involved, this will militate in favor of low bids. So, unless KTA's procedures are modified to allow lease payments over time from the income the new owners earn on the investments they make in the new companies post-privatization, the expectation that there will be no funds for future compensation claims may not be too far off the mark.

This may be the expectation that is currently motivating the rising demand for restitution of properties expropriated by previous governments. Authorities of the MAFRD are the most vocal in making these demands, although in specific municipalities the demand for restitution appears to be significant. In the Prizren Municipality, for example, municipal officials there estimated that there are 1,000 claims for restitution.

The EAR, the EU's project activity in Kosovo, also has entered the debate. Under one version of a land trust proposal currently circulating within EAR, the eventuality of KTA's mandate expiring without all the land controlled by SOEs having been privatized—which now looks inevitable—is met by creation of a land trust. This would hold the SOE land in trust, offering leases of up to 10 years, until its final disposition is determined. One of the purposes of the land trust would be to hold the land in expectation of the success of future claimants for land compensation and restitution.

9.3.5 Expiration of KTA's Mandate

The expiration of KTA's mandate in June of 2005 only adds to the uncertainty surrounding the whole privatization process, including that pertaining to the SMEs that are currently leasing land and buildings on SOE property. It also provides an incentive for those opposed to the privatization process to attempt to stall its implementation until the mandate expires.

9.4 An Unkept Secret: Land as the SOE Main Asset

In February of 2002, Riinvest, an institute for development research, carried out a survey of 193 SOEs. The survey contained questions similar to one carried out in 2000, allowing comparison of trends across time. Of particular interest was a comparison of the management's valuation of fixed assets over time. Table 15 below summarizes the results both in terms of the value of fixed assets and of their percentage contribution to that value.

Table 15: Trends in SOE Fixed Asset Values

Description	2000		2001	
	Value (in millions of deutsche marks)	% of Total	Value (in millions of deutsche marks)	% of Total
Land	866	19.4%	1,347	37.4%
Buildings	2,022	45.3%	1,384	38.4%
Equipment	1,576	35.3%	871	24.2%
TOTAL	**4,464**	**100%**	**3,602**	**100%**

Source: Riinvest surveys of SOEs.

A number of changes are notable in this structure. First, the value of land is increasing as a proportion of total fixed assets, even as the total itself has fallen by nearly 20%. Second, the value of both buildings and equipment has fallen precipitously, both in relative terms and in estimated market value. This tends to support the notion that the land underneath the SOEs being privatized is increasingly the real target of investors. And the finding that the other fixed assets of SOEs are being decapitalized as they await privatization.

9.5 Investment and Property Rights

Economic analysis of the current situation in respect to property rights and investment in Kosovo may be summarized briefly as follows:

- SMEs appear to be investing, and this investment is financed in part by small business owners' mortgaging their homes and other properties. Mortgages appear to be accelerating, as homeowners and banks are willing to unlock the "dead capital" of their homes and properties for business investment purposes.
- Land values in Kosovo, particularly for agricultural land, in many cases exceed their value even in production of high-value crops. What appears to be happening is that failure to invest in infrastructure to service housing construction and to revise land use codes to allow construction in formerly agricultural areas over periods spanning several decades are distorting land values when faced with very high demand for building land.
- The land market as represented by sales appears to be stagnant or even declining in dynamism the past two years.
- Investor interest in SOEs has been disappointing, and with the exception of one Albanian-Macedonian investor, no foreign investors have been successful bidders in the privatization process. In part this is because of the risks inherent to the property rights problems currently being sorted out in Kosovo. Investors are reticent to face the risk of losing value post-privatization if their land parcels are rezoned (or expropriated)
- The inherent conflict between paying creditors and former owners, and investing real money in the privatized enterprise also militates to reduce the value of the privatization bids.

- The land controlled by SOEs appears to be the main asset of interest to investors, which if privatized may or may not be used to respond to housing demands or to the needs of municipalities for providing infrastructure to future urban development.
- The paralysis of the privatization program reduces the probability that there will be any money left in the trust fund for distribution as compensation for valid claims of former owners, and this increases pressure to derail the privatization process.
- Municipalities also are left in the lurch, although they would seem to be a natural ally of SOE privatization, because claims of creditors (including the central government) are given priority over municipal needs for allocation of lands for public use.
- A similar argument applies to other public interests such as forest, river basin, and soil conservation and environmental protection, which may conflict with rapid privatization of SOE land.
- As the privatization process has slowed to a near halt, restitution has gained credibility as a means of privatizing land in competition with the privatization of socially owned land to local farmers.
- Meanwhile, SMEs dependent on leasing SOE land and fixed assets are left in a legal limbo while the privatization process is sorted out, and in fact are provided with worse incentives in the interim than they were before the privatization process began.

10.0 UNMIK Standards and Property Rights

In December 2003, UNMIK issued a list of standards that should be satisfied by mid-2005 in order for discussions on the final status of Kosovo to begin. Part VI deals exclusively with property rights. It states:

> The fair enforcement of property rights is essential to encourage returns and the equal treatment of all ethnic communities. This requires that there is effective legislation in place, that there are effective property dispute resolution mechanisms; that rightful owners of residential, commercial and agricultural lands are able to take effective possession of their property and that there is an accurate system for transfer, encumbrance and registration of property as well as the prevention of coerced property sales.
>
> Property Rights
>
> 1. Legislation is in place that is consistent with European standards.
> 2. Illegal occupants have been evicted from properties and the property returned to its rightful owners.
> 3. Municipal courts resolve property issues without discrimination against minority communities and do so at a rate comparable to European court systems.
> 4. The Police enforce these decisions routinely and without discrimination.
> 5. The Housing and Property Directorate and the Housing and Property Claims Commission have effectively resolved their backlog of cases.
> 6. There is an effective system to remedy disputes over agricultural and commercial property.
> 7. A property rights registry has been established and is functioning and municipal cadastral surveys have been completed.
> 8. Municipal authorities cease unlawful or unjustified attempts to develop public lands that have long-established informal settlements by minority communities or other vulnerable groups.
> 9. Informal settlements of vulnerable minority groups have been legalized and regularized.
> 10. Preservation of Cultural Heritage: Kosovo's cultural heritage is respected as the common patrimony of all of Kosovo's ethnic, religious and linguistic communities.
> 11. All communities are entitled to preserve, restore and protect sites important to their cultural, historical and religious heritage with the assistance of relevant authorities (PISG), in accordance with European standards.
> 12. There shall be neither discrimination nor preferential treatment of cultural heritage properties of any community...

The assessment team has noted that the UNMIK standards are rigorous and it will be difficult for the Kosovars to attain the results in a little over one year. Areas such as registration of property, adjudication of outstanding claims, and disputes and returns are highly complex and at times politicized. The OSCE is drafting an implementation

plan that addresses each of these issues and has proposed creating a special working group. The proposed working group will include representatives from the relevant UNMIK offices, the PISG, and other donors. It will be important to have a coordinated effort in addressing each of the points set forth in the standards and input from the PISG will be a crucial component for success.

11.0 Donor Gaps and Recommendations

Having clear and recorded rights to real property is a goal to be achieved in Kosovo. Investments of capital and labor by the holders of property to improve the productivity of their properties are affected by the lack of legally defined rights.

Access to institutional credit through mortgage lending is even more dependent on clear and recorded rights to real property. The use of moveable and immovable property secured mortgages to get access to investment funds has gained acceptance and has allowed the banks to provide working capital and longer-term loans for home and business investments. As the availability of loan funds and the number of loan applicants increases, there will be rising difficulties with using immovable properties as security, due in large part to ambiguities in the property possessors' registered information.

Banks also are experiencing constraints on their lending due to a fear of not being able to realize their security interest in immovable properties, in turn due to doubts about property rights and to volatility in the immovable property markets.

Immovable property markets (at least the formal markets) also appear to be stagnating. In large part this market stagnation is likely to be due to the lack of legally registered rights to land and buildings. Market stagnation means that the advantages of a market-oriented economy will be difficult to achieve.

Investor interest in socially owned land and buildings is limited by several factors:

- lack of clarity concerning social and private claims to land and buildings nominally in the social ownership sector;
- lack of clarification of how to meet municipal needs for land and buildings;
- ambiguities about how to satisfy the broader public interests in riparian rights, public rights of way, and the protection of sensitive environments;
- the continued debate about restitution without progress on specifying the conditions for such restitution;
- unsatisfied demands of the large small holder population for land, particularly land held in social ownership and apt for use as pastures; and
- the continued lack of clarity about the roles of UNMIK and the Government of Kosovo at the central and municipal levels in the definition of property rights.

To help address these constraints on the development of Kosovo, the team proposes the following activities, approximately in sequential order.

11.1 Support OSCE Implementation Plan for Achieving Standards

The OSCE is drafting an implementation plan for meeting the standards set by the UN and has proposed creating a special working group for property. The proposed working group will include representatives from the relevant UNMIK offices, the PISG, and other donors. It will be important to have a coordinated effort in addressing each of the points set forth in the standards and input from the PISG will be a crucial component for success.

11.2 Improve Legal Framework

The following recommendations are set forth in a manner that takes into account a specific sequence of events. This sequencing is important to ensure that a complete legal framework for property rights is produced and subsequent training and educational tools reflect the most current information.

11.2.1 Provide Comprehensive Analysis of Property Legislation and Legal Gaps

As stated in this assessment report, there are potentially four bodies of law that must be consulted in order to ascertain the legal basis for land tenure, property rights, and transactions. A further complication is that it is possible to have only certain provisions of a law still in force, resulting in a patchwork of relevant legislation regarding property rights. The current law regulating property relations is based on outdated concepts that were drafted when the government wanted to limit the amount and scope of private ownership. To date, there has not been a comprehensive legal analysis of property legislation still in force and a subsequent gap analysis. The UNMIK legal office recognizes the need for such an analysis.

A detailed analysis of legislation should be produced in order to determine which laws and parts of laws are still in force. Gaps and insufficient legal provisions to support private ownership and the land market should be identified and recommendations provided in order to produce a legal framework that supports the economic development of Kosovo.

11.2.2 Draft Legislation for Determining Property Rights

A complete legal framework regulating property is fundamental to protecting private ownership rights and supporting the land market. Although a new Civil Code for Kosovo with basic provisions on immovable property is being drafted, supporting legislation will need to be in place before the land market can develop effectively and work efficiently. Based on the legal analysis and identification of gaps and insufficient legal provisions, legislation should be drafted to address the issues.

One of the first provisions that should be eliminated is the "right of first refusal" that must be issued by the municipality before a transaction involving urban land can

take place, or by an agricultural SOE for a transaction involving rural land. The procedure was introduced when the old regime sought to place most property under social ownership. However, the procedure is no longer needed and it simply adds time and increases the cost of transacting property.

11.2.3 Assemble Compendium of Current Property Legislation

There is currently no compendium of relevant property legislation issued and in force that provides guidance to legal professionals, judges, and institutions that make decisions concerning property rights. Due to the many diverse sets of laws and regulations affecting property rights, and the fact that certain parts of old legislation may still be in force, a comprehensive compilation of property related legislation should be assembled and distributed to judges and legal professional. A single reference book related to property legislation would be an extremely effective tool for efficient and consistent application of relevant property legislation.

Once the legal analysis is finished, a complete compendium of property-related legislation translated into the appropriate languages should be compiled and published.

11.2.4 Produce Property Law Commentary

Legal commentaries are extremely effective tools to assist judges and other legal professionals in adjudicating cases. Commentaries are particularly helpful in Civil Code countries where case law is not used as legal precedent. Due to the new concepts of property rights that will be introduced in the Civil Code and supporting legislation, a commentary that helps legal professionals understand the concepts and how to apply the law will help ensure consistent and correct application and ultimately protect property rights and secure tenure of property.

11.2.5 Provide Training to Property Law-related Professionals

Judges, bankers, lawyers, MCOs, planners, municipal leaders, and other professionals that administer property need training on how to interpret and apply relevant property laws, including with special importance the new mortgage, registration, and cadastre laws. Also, due to the new concepts of property rights that will be introduced in the Civil Code and supporting legislation, training on the laws will enhance their understanding and support an effective and consistent adjudication of property law, thereby protecting rights and supporting the land market.

Courts in particular need instructions on how to process second mortgages. In particular, they need instructions on how to deal with second mortgages where the first mortgage is registered in the name of a different bank or financial institution.

11.2.6 Facilitate Inheritance Procedures involving Kosovars Abroad

Support should be given to set up Kosovo interest sections (equivalent to consulates) in countries around the world (or set up "relationships" such as the U.S. has with the Swiss to represent it in countries with which it does not have relations). The purpose of these sections or agreements would be to allow Kosovars to provide depositions acceptable in courts for land transfers and settlements of inheritance claims. Procedures for using this evidence should be determined.

11.2.7 Define Tenure Forms and Procedures for Access by Small Farmers to Socially Owned land

For non-private land not adjudicated by KTA upon expiration of its term, legal procedures favorable to local farmers should be defined for access to agricultural land and pastureland funds, such that local farmers are able to buy or lease small parcels of land of sizes and types needed to expand their operations and to reach more commercially viable farm sizes for the types of production in which they are engaging. The design of some degree of local control would be essential to assure proper functioning of this land transfer system and mechanisms would have to be included to assure its transparency.

11.3 Support Municipalities' Administration of Land

The municipalities are gradually assuming more of the responsibilities assigned to them by law and required of them in order for the orderly administration of land. However, they are constrained by decades of neglect. To enable municipalities to respond more effectively to the challenges of local self government, the following activities are essential.

11.3.1 Inventory Land Use and Possession Patterns

Municipalities need help in updating their archives, perhaps using KCA data, to identify socially owned properties, particularly those recorded as being possessed by the municipality. Such data would also be useful to develop a list of socially owned buildings and land which should involve consultation with the municipalities in instances of changes in the management of such properties. That inventory could assist in the assignment of land and buildings presently classified as socially owned according to the public entities with administrative responsibilities, and what those responsibilities are.

Such an inventory should be developed in cooperation with central ministries with administrative responsibilities over certain types of properties, such as the MAFRD for socially owned and privately owned forest lands, the Ministry of the Environment and

Spatial Planning for sensitive environmental areas, and the Ministry of Trade and Industry for the administration of sub-surface mineral resources.

11.3.2 Assist with Municipal Land Use Plans

The privatization or continued public management of properties which are presently socially owned will occur within the framework of municipal development plans, urban development plans, and urban regulatory plans as called for in Law 2003/14 on Spatial Planning, as approved by the SRSG on 10 September 2003. Such plans are urgently needed, and yet most municipalities have very few resources to meet these requirements. Staff must be trained and basic geographic information concerning the present uses of land has to be assembled and presented in a geographic format.

11.3.3 Create a Facility for Training and Land Use Research

There is no entity in Kosovo that can support the municipal and central government efforts at administering land resources. Staff need a continuous program of training, and Kosovo needs an agency that has the specialized staff and capabilities to conduct research into the causes and consequences of land tenure and land use problems, such as illegal construction and the separation of responsibilities for the management of socially owned property.

An Association for the Resolution of Property Issues, independent of any ministry and the university but linked by agreements with government and academia, should be created.

Its responsibilities should be integrated into the general planning and development structures of Kosovo. Its purposes should include research into property issues, public education concerning these issues and their solutions, and training of public and private sector specialists in land tenure administration. Its members should include representatives of:

- the private sector (banks, realtors, surveyors, attorneys),
- the public sector (land use planners, MCO staff, municipal court staff, legal offices' staff, environmental protection specialists, property taxation specialists), and
- the NGO sector (environmental protection organizations; professional associations such as the organizations of realtors, surveyors, and lawyers; and landowner associations such as farmer associations).

Studies in addition to informal housing should include:

- A Kosovo-wide study of land values for agricultural purposes would help banks make use of the value of agricultural land in their lending to support development of profitable sub-sectors of agriculture, and would be an analytical window onto how the Kosovo economy and society are developing.
- Assumptions made concerning economies of scale in agriculture and problems associated with fragmentation need to be tested, since they are currently the basis of policies which are failing to harness the full potential of Kosovar agriculture. A study of how private sector farms operate, the variety of farm and non-farm activities engaged in and other sources of income, how they finance these activities, and how property rights affect their ability to make best use of their existing resources and to acquire additional resources, needs to be done as soon as possible.
- A study should be done about the possible institution of a tax on the value of all land, separate from the buildings or structure built upon it, for the purpose of encouraging putting land into production in its highest use. In the case of agricultural land, it will encourage owners of vacant land at least to rent it to neighboring farmers for annual crops whose value is sufficient to pay a rent covering the land tax.

11.3.4 Procedures for Resolving SME Property Issues

At the municipal level, there is substantial interest in stimulating private economic activity. In Suhareka, for example, the municipality is working with an association of businessmen to create an industrial park. In other areas, SMEs are being established with whatever tenure forms which seem to work. These initiatives deserve assistance to find the tenure arrangements that will give sufficient security to the local investors so as to encourage their investments as well as their success with applying for loans to expand those investments.

11.4. Support Land Administration Programs

The Land Administration Action Plan and the program assembled for launching five projects in its implementation deserve support. From the point of view of property rights, there are three priority themes.

11.4.1 Prepare Mechanisms for Local Oversight of IPRR/Cadastre Operations to Control and Minimize Administrative Misbehavior

A special program should be developed in association with the KCA and the Municipality of Pristina to devise workable mechanisms for monitoring the operations of the MCO and for assuring transparent and efficient administration. The Pristina MCO is the most used in Kosovo, the property values are probably the highest in Kosovo, and the temptations to distort procedures are the hardest to resist. If

procedures can be developed to work in the Pristina environment, they will probably work elsewhere.

11.4.2 Train IPRR/Cadastre Staff in New Registration and Cadastre Laws

The Land Administration Program correctly emphasizes the importance of staff training and the clear development of administrative structures and procedures for the operation of the new IPRR/cadastre system.

11.4.3 Develop Projects for Achieving Special Adjudication Targets

The clarification of rights to property is a high priority for Kosovo. The land administration program's strategy is to conduct this clarification on a case-by-case basis as people request such clarification, such as when preparing for a sale, mortgage, or inheritance. It is possible to develop targeted property rights adjudication for specific types of properties of high priority for specific programs, such as the legalization of certain types of illegal constructions, socially owned apartments, or priority agricultural land.

Such "mini-adjudication" efforts, however, should be undertaken only after the IPRR/cadastre system is shown to be operating transparently and efficiently in the MCOs administering land records for the adjudicated properties. Special attention should be given to the Pristina MCO to assure that it is operating transparently, efficiently, and in a client-oriented fashion.

11.5 Regional Harmonization of Land Administration

From the point of view of external donors and investors, the fragmentation of land administration into the various countries of the Balkans is a disincentive for investing. In order to harmonize land administration concepts and laws in the region, a meeting on land administration should be formed to organize a series of workshops on specific land administration themes.

The participants in the meeting should be a limited number of people from places close to one another geographically and of similar size and resource base, such as Serbia/Montenegro, Macedonia, Albania, Kosovo, Bosnia-Herzegovina, Croatia, and Slovenia.

The objectives of these workshops would be to harmonize land administration activities and concepts in such a way as to learn from regional land administration experiences, to facilitate the attracting of investments and to assist with the future integration of the smaller Balkan countries into the European Community.

ANNEXES

Appendix A: Scope of Work for Property Rights Assessment in Kosovo

Appendix B: List of Contacts

Appendix C: Photo Collection

Appendix D: Reference Forms (Scanned Example Documents)

Appendix E: Gjakova MCO History

Appendix F: Property Legislation in Kosovo

Appendix A: Scope of Work for Property Rights Assessment in Kosovo

I. Purpose

The purpose for this SOW is to conduct a land tenure and property rights assessment to determine how property rights are currently influencing conflict, investment, agriculture, and municipal governance. The work will identify possible areas where USAID/Kosovo might provide technical assistance to draft laws, strengthen institutions and/or resolve conflicts which will enhance household property security and business investment, improve economic growth, and lead to more effective local governance.

II. Background

Property rights is an extremely important issue for Kosovo, constituting one of the eight written standards established by the UN Security Council in order to prepare Kosovo for final status.

> The fair enforcement of property rights is essential to encourage returns and the equal treatment of all ethnic communities. This requires that there is effective legislation in place, that there are effective property dispute resolution mechanisms; that rightful owners of residential, commercial and agricultural lands are able to take effective possession of their property and that there is an accurate system for transfer, encumbrance and registration of property as well as the prevention of coerced property sales. - United Nations Mission in Kosovo (UNMIK), December 10, 2003

Achieving this standard will require progress in many areas, including that: legislation is in place that is consistent with European standards; illegal occupants be evicted; municipal courts can resolve property issues without discrimination; the Housing property Directorate and the Property Claims Commission effectively resolve backlogged cases; and the property rights registry be functioning properly and municipal cadastre surveys completed. All of theses will require a clear understanding of property rights in Kosovo and the institutions that support those rights.

Four years after a violent conflict that placed Kosovo under a United Nations protectorate, Kosovo is moving toward institutional integration with Western Europe and post-communist market-based systems which facilitate that integration. Policies which encourage economic and social prosperity inevitably depend on well-functioning property rights for both households and businesses. The settlement of conflicting property rights incur enormous transaction costs and prevent resources from being allocated to their most effective use in a market economy. Clear property rights are necessary to spur economic growth and to avoid costly skirmishes among parties with ambiguous claims.

Virtually all of the property conflicts in Kosovo involve rights on immovable property, principally land, which is held in three ways: private, state- and socially owned. "Private" property is held by individuals, families and now possibly commercial enterprises. State owned land is managed by municipalities, and socially owned land is managed by the SOEs.

Beginning in 1945, the Yugoslav Government started a process of land reform programs that both weakened (and abrogated) property rights, and gradually took physical possession of land from private interests. The Federal Republic of Yugoslavia Constitution of 1974, which mirrors the government's position of property rights in earlier constitutions, states that no one has the right of ownership over social means of production. Means of production include natural resources (i.e., land and forests). 62

At the same time that property rights were becoming less precise, physical "possession" of land was also being reduced. Between 1945 and 1991 some smallholders were able to keep land as "possessors," although the area that one could possess was also gradually reduced from 30 to 2.5 hectares. Land was nationalized, confiscated and cleared to become property of the state. Earlier (between 1945 and 1960) much of the land confiscated was put under the control of cooperatives, but as these failed they were transformed into SOEs.

The Land Administration Policy for Kosovo (2002) states a key problem with land administration is a "lack of security and certainty of ownership…land tenure in Kosovo is based on the socialist model of the former Republic where ownership is not defined for those properties falling within the urban sector or for socially owned enterprises. It is generally accepted that 'possession lists' are the closest to 'ownership' in terms of occupancy, usage and disposal."

Some of the land reforms, particularly in the 1980s and 1990s, were discriminatory against ethnic Albanians (in favor of Serbs). The taking of land by government (through nationalization and confiscation), combined with attempts to redistribute land and individual efforts to lease and sell land in the period from 1945 to 1999 led to a patchquilt of overlapping and competitive claims for land taken by the state as well as land left in possession of private interests. This patchquilt is now the source of intense conflict within and between ethnic groups.

In addition to the confusion surrounding the nature of private rights there is also confusion over who has rights to which properties. Many people claim undocumented rights, some of which were acquired before 1945. Many people did not re-register possession rights when land was divided (for example upon inheritance) or for transactions when it was bought or leased from another person.

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[62] See Aleksander Dardeli, Department of Trade and Industry, UNMIK, Internal Memorandum, May 2001.

In the 1980s and 1990s government distributed land "back" to private interests, but in some cases these distributions favored one group over another and did not necessarily take into consideration the previous owners/possessors, some of whom had documents ignored by the government or who had utilized uncontested property for a long period (at least a generation). Consequently, there are still outstanding claims for land that has already been distributed to someone else. Further, between 1990 and 1999 land transactions in Kosovo between ethic groups were declared illegal by the Yugoslav Government. Although transactions continued to take place, people did not register them.

Agriculture

Land rights are particularly important in the agricultural sector. Unclear or contested property rights could be a critical constraint to the overall economic development of Kosovo as the agricultural sector supports about 60% of the total population and contributes approximately 30% to GDP.

Approximately 80-90% of the agricultural land is utilized by "private" interests, mostly individual and family. The average holding is less than two hectares, and this is often fragmented into smaller parcels. Another 10% of the agricultural land in Kosovo is held by approximately 23 agricultural SOEs. These farms cover an estimated 60 – 70,000 hectares of the best agricultural land in Kosovo. The balance of rural land is owned by the state.

Municipalities

For municipalities across Kosovo, the ultimate determination of private property holdings will further challenge their planning capacities, while affecting tax codes, spatial planning criteria, urban development patterns, and exploitation or preservation of key features of their natural environment.

The perception of gains and losses in communities through clarification of property ownership has already led to municipal initiatives. Municipalities are driving their own version of municipal managed restitution, determining private property ownership in a process backed by a Ministry of Agriculture (MA) resolution in which SOE lands are effectively being handed back to pre-WWII owners. Others have coordinated with the SOEs to re-distribute large agricultural land parcels to beneficiaries for various uses. In yet other cases, there is reportedly non-agricultural (and non-permitted) development of SOE land.

An evaluation of the programs now being managed by municipalities in which they assert (often with MA backing) private ownership rights on SOE land holdings will offer a measurement of the assets passing to local political parties. Meanwhile, municipalities' de-facto recognition and (extra-legal) determination of "private" land

holdings could permit claimants a degree of satisfaction but could also lead to future legal entanglements demanding involvement of the courts and Kosovo Cadastre Agency.

III. Objectives of the Evaluation

The principal objective of this assessment is to provide an comprehensive picture of the property rights situation in Kosovo. By researching and documenting past, ongoing and planned activities in this area, USAID hopes to clarify confusion regarding the current state of formal and informal property rights and how they affect conflict, investment, agriculture, and municipal governance. It will evaluate informal property rights and options for converting socially recognized property rights into registered titles that can be bought and sold and honored as collateral. The assessment team will address all manner of property issues, (movable and immovable, private and public, rural and urban, etc.) as they pertain to Kosovo.

Legal (structure and recourse)

The nature of private property rights under the former Yugoslavia is unclear in terms of the actual laws in place, the manner in which they could be and were interpreted, as well as the rights that were enforced by governing institutions and practiced by individuals. In discussions, people often refer to "property rights" without clarifying or distinguishing specifically between formal definitions and informal but widespread usage patterns. Differing legal bases for property rights present obvious difficulties for resolving conflicts and ensuring owner/investor security.

- Define the current state of property rights for immovable and movable property. What is the legal status of property that was not nationalized or confiscated for state or socially owned property? Are legal changes needed to clarify these rights or are existing rights clear enough to encourage private sector investment?
- What legal recourse do people have when there are property conflicts? Are the courts functioning? Are the courts functioning well enough to make people feel that their rights over property are protected? Detail the number and categories of cases being brought to court. (See the report by OSCE on Property Rights, 2002-2003 and determine if these issues are being addressed).
- What is the legal status of land that is being privatized by the municipalities? What are the implications of these privatizations?
- Detail the obstacles in the legal structure related to settling property rights issues. What can be done to make the legal system operate more efficiently and systematically to overcome prominent obstacles?
- What is the status of minority rights (Roma and Serb) with regard to property that was abandoned? What alternatives exist for resolving claims on abandoned property?

Institutions Related to Property Rights

Following the 1999 conflict, in which property documents were destroyed or carried to Serbia, a three-year program to support the re-establishment of the cadastre system in Kosovo was put in place. The main objective of the program was to restore "a well functioning land and property market which will contribute to economic growth, and democratic and sustainable development" and to "render proper land and property services to the beneficiaries". However, the program expired short of its goals and contradictions exist with respect to the number of property owners registered.

- What are other donors doing with regard to addressing property rights issues; strengthening property rights; funding the Immovable Property Rights Registry, etc? Where are the gaps? What can USAID or other donors do to fill in the gaps toward property rights reform?
- Identify gaps that can be effectively addressed by donor assistance and will have a substantive impact in addressing issues raised in this scope of work. Prioritize the gaps in terms of their value in resolving property rights issues and the cost in overcoming them.
- How complete are cadastral data? Would a cadastral survey clarify the best areas of investment? How soon can a timeline for registration be established and what would it involve?
- How complete and accessible are court records documenting property transactions? What types of property records are being stored in court archives, and how essential are these to resolving property disputes? What steps are being taken to preserve these documents and increase their accessibility? What mechanisms can be established to resolve conflicting judicial decisions?
- How can issues regarding property rights be constructively conveyed to the public? How can the media be engaged to influence the tone of the debate as well as the general perception of the public?

Commercial/Investment Implications

The importance of clear property rights to a well-functioning economy and democratic society is well understood. Improving the delineation and exercise of property rights gives investors the confidence they need to engage in productive activities and reduces the transaction costs of conducting business. Even though property rights are ill-defined in Kosovo, some land transactions are being carried out and a small amount of land is being used for collateral.

- To what extent are people making property transactions now? If so, what types of documentation are they using/requiring?

- This assessment will detail the mechanisms used by real estate agents and individuals through government agencies to commercially transfer property as well as the types of property used by creditors for collateral. It will evaluate the security of mechanisms and documents used for property transfer and collateral and the extent to which insecurity reduces the functioning of market transactions and commercial lending. Options for securing those mechanisms will be outlined.
- To what extent is the current ambiguity in property rights affecting (likely to affect) investment? Is property being secured (leased, bought, borrowed, etc.) to make investments in the agricultural sector? Other commercial activities? If not, what is needed to encourage investment?

IV. Methodology

In addressing these questions the contractor will utilize an evaluation methodology plan that includes:

- A review of available materials[63].
- Key informant interviews with USAID/Washington, and USAID/Kosovo, representatives of donors involved in property rights issues, relevant UNMIK and PISG[64] representatives and municipal officials.
- The activities of the assessment team will be coordinated by one specialist who will remain in Kosovo for the duration of the fieldwork and be responsible for synthesizing the findings into a coherent report.

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[63] On the Promulgation of the Law Adopted by the Assembly of Kosovo on Amendments and Additions to the Law No. 2002/5 on the Establishment of an Immovable Property Rights Register. Regulation No. 2003/27 (UNMIK/REG/2003/27), August 2003; On the Transformation of The Right of Use to Socially-Owned Immovable Property. Regulation No. 2003/13 (UNMIK/REG/2003/13) May 2003; Law on Cadastre. (Draft, July 2003); On the Implementation of The Law On The Establishment of An Immovable Property Rights Register. Administrative Guidelines. (Draft August 2003); "The Ottoman Dilemma: Power and Property Relations Under the United Nations Mission in Kosovo." Lessons Learned and Analysis Unit, Unit of the EU Pillar of UNMIK in Kosovo, Pristina, 2002; "Property Rights, 2002-2003," OSCE Mission to Kosovo, 2003.

[64] Since the end of the conflict in 1999, the political administration in Kosovo has been represented by the UN Mission in Kosovo (UNMIK). The Constitutional Framework, established in 2001, provides for a division of political and economic decision-making authority between the Provisional Institutions of Self-Government (PISG), which represent the elected Government of Kosovo and those institutions which report to the Office of the Special Representative to the Secretary General (SRSG). In the economic sphere, decision-making authority in areas of trade and investment, fiscal policy and administration, and commercial law are generally considered transferred powers. The areas of privatization, public enterprise management, utilities regulation (other than telecommunications), and banking regulation, are generally under the direct control of the SRSG wing of UNMIK.

USAID/Kosovo will provide a list of potential interviewees and information sources before and upon arrival in Kosovo.

IV. Schedule and Deliverables

A. Schedule

It is anticipated that the Contractor will spend four to six weeks in performing this assessment as follows: three working days in Washington, D.C., 18 days in Kosovo, and three days for completing the report. The team leader will spend up to 24 work days in Kosovo with an authorized six-day working week and will be allowed an additional six days for finalizing the report. Team members (apart from the team leader) will spend 18 working days in Kosovo and three days in preparation and three days in finalizing their contributions to the final report. USAID anticipates that the evaluation team will gain a solid familiarity with the issues related to property rights prior to the field work in Kosovo.

The Contractor will begin work at a mutually acceptable time, after consultation with USAID Kosovo. Field work should commence no later than January 15, 2004. The contractor may propose an alternative schedule with approval from USAID.

B. Deliverables

1) An Outline (Table of Contents) of the report is to be submitted within six working days after arrival in Kosovo.
2) There is to be a briefing at the half-way point of the assessment, with debrief before leaving Kosovo.
3) All of the questions and issues mentioned in the "Objectives of the Evaluation" section (III) will be addressed in the report.
4) A draft of the final report will be submitted to the Mission for review before the team leaves Kosovo. The Mission will respond with comments within 10 working days. The contractor will submit the final report within 10 working days thereafter. The final report should contain an executive summary and should clearly identify the team's findings, conclusions, and alternative policy options. Appendices should, at a minimum, list the people and organizations interviewed.
5) The final report will detail the gaps and bottlenecks related to property rights that are not being met by national or international efforts. It will prioritize the gaps in order of how severely they are constraining Kosovo's economic and social progress, as well as the challenges and costs associated with overcoming them. The final report will also outline a matrix of what needs to be accomplished related to the range of informal and formal property rights on public and private property.

C. Team Composition and Qualifications

The contractor's team will consist of four experts in the fields of land law (the specialist in this area will preferably serve as the team leader), land tenure/agriculture, urban property and economics. The team leader will be assigned the ultimate responsibility for overall team coordination and development of the final report. Each team member should be assigned preliminary roles on which to concentrate.

The team will conduct site visits in a manner that maximizes the number of project sites visited and documents consulted. The team leader must be a senior advisor and evaluator with experience conducting similar evaluations of USAID programs in the Balkans and possess at least ten years of development experience.

We anticipate that the team will engage local consultants, as there are several legal documents important to property rights issues that must be translated and understood. Local consultants will also be necessary for making site visits to municipalities, regional government offices, SOEs, etc..

D. Logistical support

The Contractor is responsible for obtaining its own logistical support in Kosovo, including accommodations, translation, and secretarial support. USAID/Kosovo staff will be available to assist with setting up appointments and providing background materials. USAID/Kosovo will also provide vehicles for use outside capital Pristina.

The Evaluation Team reports to Michael Martin, Private Enterprise Officer, USAID/Kosovo.

Appendix B: List of Contacts

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Appendix D: Reference Forms (Scanned Example Documents)

The attached document folder entitled "Appendix D" includes:

- Cadastral map
- Rural cadastral map
- Change Book (four sample pages)
- Possession Lists (four sample pages)
- UNMIK Regulation 2001/9 on the Constitutional Framework on Provisional Self Government in Kosovo

Appendix E: Gjakova MCO History (January 1999-January 2004)

Special report by Skender Tullumi.

After the NATO intervention and the Serbian forces withdrawal in the June 1999, the refugees began to return.

Despite the pain of the victims and the massive destruction of buildings, institutions began to work. The MCO of Gjakova was the first institution that began to work in June 1999.

First the factual situation was analyzed, and afterward it was concluded that from before the war the following items had been moved to Serbia:

- the entire cadastral operational information for 70 cadastral municipalities,
- all the surveying equipment,
- computers and photocopying machines, and
- three vehicles (Lada 1600, Yugo 60, and Renault 25).

In the cadastral office, the following items remained:

- the legal document archive, and
- some copies of survey plans that were not updated.

As a result of the conflict, one of Gjakova Cadastral Office's colleagues is still considered missing (Gazmend Jusufi).

The cleaning, regulation, and sorting of the documentation found in June 1999 was the first task to be done. An old instrument (Dalhta 020) was borrowed from Prizren and Rahovec, and regardless of the risk of mines, fieldwork was begun, mainly to serve different NGOs. From the money earned, a Total Station Leica 307, Leica 702, and a Volkswagen Golf 2 vehicle were been purchased.

Some of the cadastral staff had their own software and databases that contained data registered up until January 1995. The office's work with customers began on 9 June 1999. Citizens were informed via local radio that they could obtain copies of the possession lists last updated in 1994.

The establishment of the KCA changed conditions in favor of the Gjakova Cadastral Office and the entire geodesy in Kosova. Copies of the non-updated plans and zipped copies of the cadastral data until the year 1999 were obtained from the KCA archive using Serbian software called Bormen.

Since in the end of 2000, the KCA, in cooperation with the MCOs, has applied their digitalized software/database to input data and transfer data from the Bormen to their software/database. They continue to update their data today, so one could ascertain that the Gjakova Cadastral Office has all the digital possession lists but does not have geodesic plans (only non-updated copies).

Presently, the Gjakova Cadastral Office is performing certain tasks such as:

- issuing copies of the possession lists, copies of the plan, and different certificates;
- preparing parcel histories;
- validating contracts and other documents foreseen with the law;
- resolving problems in the field; and
- offering expertise for court needs.

The number of the employees in the year of 1999 was 10. In 2004, they have 17 employees, five of whom include a custodian, two security guards, a driver, and a cleaner. The number of the experts is low because the municipality of Gjakova only has 58,735 ha (587 km^2).

The cadastral experts have attended many different training programs that were organized by the KCA, including training in:

- Total stations;
- Cadastral plans digitalization;
- Ownership cadastral data digitalization; and
- Geomedia 4.0 and 5.0 software.

The KCA also equipped the cadastre with:

- two total stations,
- one level,
- three computers,
- two printers (one of the A2 format), and
- one generator.

A Swiss organization (ABS)donated a printer.

At present the cadastre posseses the following equipment:

- nine computers (Pentium 4 & 3),

- three total stations,
- two levels,
- two scanners,
- five printers,
- one photocopy machine, and
- two vehicles (one for fieldwork).

The cadastral building has seven offices on the first floor and one office on the ground floor. The ground floor office is empty and is waiting for renovation because it was destroyed. One office contains the archive that is also used to store the surveying equipment.

The office size is as follows:

- five offices with a space of 16 m^2,
- two offices with a space of 36 m^2,
- one office with a space of 31 m^2, and
- one buffet with the space of 8 m^2.

This amount of office space is not sufficient for the future.

In addition, based on the average age of the employees (over 50 years old), it is perceived that the Gjakova Cadastre Office should be strengthened with young experts. It is hoped that that goal will be achieved this year because the first post-war class will graduate from the Geodesy High School in Gjakova.

Appendix F: Property Legislation in Kosovo

1 March 2004

Prepared by ARD Property Rights Assessment Team for USAID
Legal Group: Kathrine Kelm, Valon Ejupi, and Donika Kaçinari

Please also see the attached file folder entitled "Appendix F." It includes the following law documents in the numbered order as follows.

General Regulations/Laws

10 UNMIK Regulation 1999/1 On the Authority of the Interim Administration of Kosovo as amended by

11 UNMIK Regulation 1999/25 and

12 UNMIK Regulation 2000/54

13 Administrative Direction 2003/3 Implementing UNMIK Regulation 1999/1 as amended, On the Authority of the Interim Administration in Kosovo,

13a Administrative Direction 2003/17 Implementing UNMIK Regulation No. 1999/1 on the Law Applicable in Kosovo UNMIK Regulation 1999/24 on Applicable Law in Kosovo

14 UNMIK Regulation 1999/24 On the Law Applicable n Kosovo, as amended by

15 UNMIK Regulation 2000/59

16 Administrative Direction 2003/16 Implementing UNMIK Regulation 1999/24 on the Law Applicable in Kosovo

17 UNMIK Regulation 2001/9, On Constitutional Framework for Provisional Self-Government in Kosovo

18 Administrative Direction 2001/23 Implementing UNMIK Regulation 2001/9 On Constitutional Framework for Provisional Self-Government in Kosovo

19 UNMIK Regulation 2000/45 On Self- Government of Municipalities in Kosovo

20 Administrative Direction 2000/28 Implementing UNMIK Regulation 2000/45 On Self- Government of Municipalities in Kosovo

21 UNMIK Regulation No 2001/19 On Executive Branch of the Provisional Self-Government in Kosovo, as amended by Document No. 27, UNMIK Regulation 2002/5

22 Administrative Direction 2002/10 Implementing UNMIK Regulation.2001/19 On the Executive Branch of the Provisional Institutions of Self-Government in Kosovo,

23 Law on Basic Property Relations (Official Gazette SFRY, No. 6/80)

24 UNMIK Regulation 1999/10 On the Repeal of Discriminatory Legislation Affecting Housing and Rights in Property

Registration and Transfer of Immovable Property

25 UNMIK Regulation 2002/22 On the Promulgation of the Assembly Law 2002/5 adopted by the Assembly of Kosovo on the Establishment of an Immovable Property Rights Register

26 UNMIK Regulation 2003/27 On the Promulgation of Assembly Law No. 2003/27 adopted by the Assembly of Kosovo concerning Amendments and Additions to Law No.2002/5 On the Establishment of an Immovable Property Rights

27 UNMIK REGULATION 2002/5, Amending UNMIK Regulation 2001/19 on the Executive Branch of the Provisional Institutions of Self Government in Kosovo

29 UNMIK Regulation 2001/17 On the Registration of Contracts for the Sale of Real Property in Specific Geographical Areas in Kosovo

30 UNMIK Regulation 2002/21, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Mortgages

31 UNMIK Regulation 2001/5. On Pledges

32 Law on Measurement and Land Cadastre (Official Gazette SAPK, No. 12/80) [some provisions remains applicable]

33 Law on Changes and Supplements to the Law on the Limitations of Real Estate Transactions SRS 30/89, 42/89, 22/91

34 Law on the Registration of Real Properties in Social Ownership (SAPK 37/71)

35 Law on Transfer of Real Property (Official Gazette SFRY, No. 45/81 and 29/86)

36 UNMIK Regulation No. 2004/4, on the promulgation of Assembly Law No. 2003/25 On Cadastre

Spatial Planning Issues

37 UNMIK Regulation No.2003/9 on Promulgation of the Law Adopted by the Assembly of Kosovo on Environmental Protection,

38 UNMIK Regulation No.2003/30 on the Promulgation of the Law Adopted by the Kosovo Assembly on Spatial Planning

Construction Issues

Please note that a new law on construction is currently in the drafting process.

39 UNMIK Regulation No.2000/53 on Construction in Kosovo

40 Law on Land for Construction (Official Gazette SAPK, No.14/80)

41 Law on Amendments and Supplements to the Law on Land for Construction (Official Gazette SAPK, No.42/86)

42 Law on Construction of Facilities for Investment and Commercial Purposes (Official Gazette SAPK, No. 5/86)

43 Law on the Conditions, Methods and Procedures for the Granting of Agricultural Land to Citizens who wish to work and live in the territory of the Autonomous Province of Kosovo and Metohija,

44 Law on Construction of Annexes to Buildings and Conversion of Common Premises into Apartments (Official Gazette SAPK, No. 14/88)

Agricultural Land and Forest/Forestry Issues

Please note a new law on agricultural land is current in the drafting process.

45 Law on Agricultural Land (Official Gazette SAPK, No.21/84)

46 UNMIK Regulation.2003/6, On Promulgation of the Law Adopted the Assembly of Kosovo on Forests in Kosovo

Taxes

47 UNMIK Regulation 2003/29 on Taxes on Immovable Property in Kosovo

Privatization Process

48 UNMIK Regulation 2002/12, On Establishment of the Kosovo Trust Agency,

49 UNMIK Regulation 2002/13, On Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters

50 Administrative Direction No.2003/13 on Implementing UNMIK Regulation No. 2002/13

51 UNMIK Regulation .No.2002/13 on the Establishment of a Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency.

52 UNMIK Regulation 2003/13, On the Transformation of the Right of Use to Socially Owned Immovable Property

53 UNMIK Regulation 2003/7, On the Promulgation of the Law Adopted by the Assembly of Kosovo on Liquidation and Reorganization of Legal Persons in Bankruptcy

54 UNMIK Regulation 2003/21, On the Promulgation of the Law adopted by the Assembly of Kosovo on Mortgages

Residential Issues

55 UNMIK Regulation 1999/10, On the Repeal of Discriminatory Legislation Affecting Housing Rights in Property

56 UNMIK Regulation 1999/23, On the Establishment of the Housing and Property Directorate and Housing and Property Claims commission,

57 UNMIK Regulation 2000/60, On Residential Claims Commission and Rules of Procedure and Evidence of Housing Property Directorate and property Claims Commission

58 Law on Housing Relations (Official Gazette SAPK, No. 11/83, 29/86 and 42/86)

59 Law on Co-Ownership of Apartments (Official Gazette SAPK, No. 43/80 and 22/87)

Expropriation Issues

60 Law on Expropriation (Official Gazette of SAP Kosovo, no. 21/78 and 46/86)