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November 7, 2008

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FROM: Vice President and Corporate Secretary

**Albania - Integrated Coastal Zone Management and Clean-Up Project**

**Legal Note**

1. As requested by the President, in response to a memorandum from Mr. Alzetta (OM2008-0075), attached for information is a Legal Note regarding the corrigendum that was issued on the "Albania - Integrated Coastal Zone Management and Clean-Up Project" (IDA/SecM2008-0559, dated September 2, 2008).
2. Questions on this note may be addressed to Mr. White (ext. 82600).

Distribution:

Executive Directors and Alternates  
President  
Bank Group Senior Management  
Vice Presidents, Bank, IFC and MIGA  
Directors and Department Heads, Bank, IFC and MIGA



## Legal Note on the Corrigendum to Albania Integrated Coastal Zone Management and Clean-Up Project

November 6, 2008

1. On September 2, 2008, a corrigendum pertaining to page 15 of the Project Appraisal Document (the “Albania PAD”) for the Albania Integrated Coastal Zone Management and Clean-Up Project (the “Project”)<sup>1</sup> was circulated to the Executive Directors (the “Corrigendum”). The Corrigendum corrected an erroneous statement included in the Albania PAD at the time the Project was approved by the Board of Executive Directors (the “Board”) three years and three months earlier, in June 2005. The sentence deleted from the Albania PAD by the Corrigendum read: “The Government has agreed that further encroachment removal will take place only after the criteria and procedures for identifying and assisting such vulnerable affected people are in place.”<sup>2</sup> The Legal Vice Presidency has been requested by management, in response to a request by Mr. Alzetta, to conduct a review of the circumstances surrounding the issuance of the Corrigendum. This Note reviews the key events surrounding the issuance of the Corrigendum and discusses what institutional lessons may be learned from these events.

### Summary of Findings

2. Our review of the pertinent facts has led us to draw the following conclusions:
- a. The erroneous statement was included in the Albania PAD during Project preparation in April 2005, two months before Board approval. In the months leading to Board presentation (prior to April 2005), some task team members became aware of the fact that the Albanian Government would not agree to a moratorium. However, the statement was not corrected in the Albania PAD.
  - b. In June 2005, in the hours immediately preceding the Board presentation of the Project, prompted by statements issued by two Executive Directors, there was some *ad hoc* attempt to address the misstatement in the Albania PAD by introducing two sentences in the opening statement to the Board correcting the error. Ultimately, for reasons that remain unclear and not fully explained to us, the Albania PAD error was not corrected during the Board presentation or thereafter, thereby leaving the Board with the

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<sup>1</sup> Project Appraisal Document for an Adaptable Program lending credit in the Amount of SDR 11.7 Million (US\$17.5 Million equivalent) to Albania for an *Integrated Coastal Zone Management and Clean-Up Project in Support of the First Phase of the Integrated Coastal Zone Management and Clean-Up Program* that was approved at a meeting of the Executive Directors held on June 21, 2005 (IDA/R2005-0126, dated June 2, 2005).

<sup>2</sup> The Project focuses on policy and institutional capacity-building for integrated coastal zone management, including the preparation and implementation of a Southern Coastal Development Plan. Under its existing laws, the Albanian Government has an encroachment removal program which it has implemented nationwide and which predates the Bank’s involvement in the Project.

impression that a Government moratorium on encroachment removal had been agreed.

- c. Based on the interviews conducted and materials examined during the course of our review, it appears that ECA management decided to strike the corrective sentences just before the opening statement on the Project was made to the Board. We believe that there was widespread confusion among the Project team and the Country Management Unit (CMU), both before Board approval and until the erroneous statement was found by the Inspection Panel<sup>3</sup>, about whether or not a moratorium agreement with the Albanian Government in fact existed, and that may have been a contributing factor explaining why the erroneous sentence was not corrected before it was brought to ECA staff and management's attention by the Inspection Panel. Nor did there appear to be a person or set of persons who in practice have been clearly accountable for ensuring the accuracy of the Albania PAD.
- d. In July 2007, the Inspection Panel received a request for investigation of the Project, alleging that demolitions had occurred as a result of the Project. The Inspection Panel, in the course of its visit to Albania to investigate the allegations, found the error in the Albania PAD and brought it first to the attention of the Task Team Leader ("TTL") in September 2007 and then to ECA management in early 2008. That disclosure prompted ECA management to discuss whether to issue a corrigendum. A corrigendum was drafted in February 2008, but ECA management ultimately decided not to issue it at that time, out of concern that issuance of a corrigendum might give the appearance of interfering with the ongoing Inspection Panel investigation and based on its understanding that the Inspection Panel report would be issued shortly, in which case it would be preferable to correct the PAD error as part of management's overall response.
- e. A July 2008 meeting with the Inspection Panel led ECA management to believe that it should issue the Corrigendum, although the Inspection Panel disputes conveying that impression.
- f. The Corrigendum was issued on September 2, 2008. The document's content was limited to the deletion of the inaccurate sentence in the

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<sup>3</sup> I have communicated to the Chair of the Inspection Panel that the purpose of our review of this matter is not intended in any way to preempt or otherwise impact the Inspection Panel's report of investigation. There is, however, a risk of some overlap between this note and the Inspection Panel's forthcoming investigative report. It should be noted that our review focused exclusively on the circumstances surrounding the issuance of the Corrigendum. I have not shared the conclusions of this note with the Inspection Panel, in order to ensure complete separation between the Panel's work and this review. Thus, the potential exists that the Panel's report will comment on some of the same matters discussed herein and reach different conclusions. In the event that occurs, I would endeavor to exchange views with the Panel after it issues its report, with a view of trying to reach a more common understanding.

Albania PAD, without sufficiently describing the underlying circumstances or context. The Corrigendum was cleared by senior management, Corporate Secretariat, OPCS and Legal for distribution to the Board despite misgivings by several in the clearance process over the insufficient explanation and highly unusual nature of the document. This appeared to be due in part to late summer vacation and travel absences that lessened the scrutiny such a document would have been expected to receive.

### **Review of Key Events**

3. In conducting our review, twenty Bank staff members were interviewed. On the basis of information provided during these interviews, the following chronology sets forth our understanding of the main events leading to issuance of the Corrigendum on September 2, 2008:

a. **Identification and Treatment of Moratorium Issue during Project Preparation**

The Bank's Project team conducted a pre-appraisal mission to Albania on or about February 21-March 8, 2005. Subsequent internal Bank e-mail correspondence among team members in mid-to-late March 2005 indicates that the Government of Albania refused to put a moratorium on all demolitions.<sup>4</sup>

The Decision Review meeting for the Project was held on April 7, 2005. The memorandum summarizing this meeting suggests that the subject of a moratorium on demolitions was not discussed.<sup>5</sup> The Project team subsequently conducted an appraisal mission to Albania on or about April 12-20, 2005 culminating in negotiations on April 20, 2005.

b. **Introduction of Erroneous Statement in Albania PAD**

On April 14, 2005, during the appraisal mission, an ECA manager sent the TTL an e-mail message which included suggested draft language for the Albania PAD discussing Albania's encroachment removal program.<sup>6</sup> The

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<sup>4</sup> The Government of Albania took the position that it was not prepared to put the enforcement of its ongoing nationwide encroachment removal program on hold because this would create incentive for continued illegal construction. This fact was never fully communicated to the entire Project team, the CMU or to ECA management until this year.

<sup>5</sup> Interviews with the CMU reveal that several conversations with local government officials took place in 2005 regarding the uncompensated displacement which resulted from the government demolitions. Although these conversations were not held in the context of the Project and were apparently completely unrelated to the Project, they occurred around the same time as Project preparation. It was the CMU management's impression from these conversations that the Government agreed that the demolitions were problematic.

<sup>6</sup> The Project team originally anticipated that the Southern Coastal Development Plan would be prepared by early 2006, in which case a moratorium would only be in effect for 6 to 8 months. Once

suggested write-up included, *inter alia*, the following inaccurate statement: “*The borrower has agreed that further encroachment removal will take place only after the criteria and procedures for identifying and assisting such vulnerable affected people are in place.*” This is the erroneous statement that ultimately was inserted in the Albania PAD and was later deleted per the Corrigendum.

c. Identification of Erroneous Statement Immediately Prior to June 21, 2005 Board Meeting

The pre-Board meeting, attended by members of Bank’s Project team, the CMU and ECA management, was held at 5:30 p.m. on June 20, 2005. None of the interviewed staff recall whether the moratorium issue or the Albania PAD error were specifically raised. That same day, the Office of the Corporate Secretary, Board Operations (SECBO), distributed comments from Mr. Dib (Algeria) at 2:01 p.m. and from Mr. Herwidayatmo (Indonesia) at 5:29 p.m., both stating that they “welcome” the Government of Albania’s agreement to halt further encroachment removal. Late that evening, at 11:58 p.m., the following language was added to the draft opening statement to the Board: “*The Bank does not have a blanket agreement with the Government to put a moratorium on the application of the Urban Planning Law, which calls for removal of unauthorized encroachments in public space.*”

The second pre-Board meeting, attended by members of the Bank’s Project team, ECA management and a Managing Director, was held at 9:30 a.m. on June 21, 2005. None of the staff interviewed recall the moratorium issue or the Albania PAD error being addressed at this meeting. Later that morning, at approximately 10:44 a.m., the following language was added to the draft opening statement to the Board: “*We will take another look at the PAD to remove any possible confusion in the public document.*” This revised statement was quickly distributed to the Project team and other ECA staff immediately before going to the Board Room.

d. Removal of Correction from the Draft Opening Statement

The Board met at 11:00 a.m. on June 21, 2005, to consider, among several items, the Project. For reasons which we were unable to clarify, the two sentences referenced above were struck from the final version of the

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adopted, the Southern Coastal Development Plan included social due diligence and measures to protect vulnerable people who may be affected by possible rezoning or direct investments resulting from plan implementation. The Project team, in particular the social scientists, viewed a moratorium agreement as preferable from a reputational risk standpoint. But it was widely agreed that a moratorium was not required in order to be in compliance with the Bank’s safeguard policies. Preparation of the Southern Coastal Development Plan was in fact delayed, and it was not adopted by the Government of Albania until July 18, 2008.

opening statement, which was thus read to the Board *without* the corrective language concerning the moratorium and Albania PAD.

On July 14, 2005, the draft summary of discussion<sup>7</sup> of the June 21, 2005 Board meeting was distributed to both the Country Director's Office and the Project team for comments and was cleared that same day with no mention of the omitted correction.

e. Treatment of Moratorium Issue by Bank Staff during Project Supervision and Following Discovery of Demolitions by Government of Albania

No further action was taken to correct the Albania PAD statement. From May 3-5, 2007, members of the Project team conducted a fact-finding mission to the Project area upon learning that the Government of Albania had demolished approximately 15 buildings in the Project area after having refrained from demolitions for almost two years. The fact-finding mission Aide-Memoire subsequently issued in July 2007 referred to the demolitions as inconsistent with a moratorium (thus indicating some on the Project team still thought a moratorium was in place) and recommended that management advise the Government to stop plans for further demolition.

During the period May-June 2007, the Project TTL moved to another assignment in a different region and was replaced by a new TTL, and a new Country Manager for Albania was also appointed.

f. Inspection Panel's Discovery of Erroneous Albania PAD Statement

On July 30, 2007, the Inspection Panel received a request for investigation of the Project, alleging that the demolitions occurred as a result of the Project. The Management Response to the Inspection Panel issued on September 17, 2007 did not refer to the existence of a moratorium.

From September 21-24, 2007, the Inspection Panel visited Albania. In a meeting with the Bank team, the Panel pointed out the erroneous reference to the moratorium in the Albania PAD. The recently appointed TTL informed the Panel that this mistake had been corrected at the Board by way of the opening statement, a copy of which was provided to the Panel. In fact, the TTL was unaware that, as noted above, the sentences correcting the error had not been read to the Board.

The Board approved the Inspection Panel's recommendation to proceed to investigation of the request on November 1, 2007. In January-February 2008, the Inspection Panel questioned former CMU management and

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<sup>7</sup> Summary consists of Board staff notes and is not an approved record.

other staff on the Project team about several matters related to the Project, including the apparent inconsistency in representations made to the Board.

g. ECA Management First Considers Whether to Issue a Corrigendum to the Board but Decides Not to Proceed

On February 26, 2008, ECA management sent a note to the responsible Managing Director highlighting the issue of the error in the Albania PAD regarding the existence of a moratorium. The note was accompanied by a draft Corrigendum to the Board advising of the Albania PAD error and by a draft letter to the Inspection Panel clarifying various matters, including erroneous representations with respect to the moratorium. The draft Corrigendum was prepared after consultation with the Office of the Corporate Secretary, OPCS and the Legal Vice Presidency.

In March 2008, Senior Management met with representatives of the Inspection Panel. Following the meeting, a decision was made not to send the letter to the Inspection Panel, nor to issue the Corrigendum. ECA management states that it had expected the Inspection Panel investigation report to be issued shortly thereafter and therefore sought to avoid any appearance of pre-empting the Inspection Panel's report. It was determined that the moratorium issue would instead be addressed in Management's Response to the Inspection Panel report. Despite the fact that the Inspection Panel's report was not forthcoming, ECA management continued to await the report before issuing the Corrigendum.<sup>8</sup>

h. ECA Management Reconsiders Whether to Issue Corrigendum and Proceeds with Issuance

In July 2008, ECA management met with the Inspection Panel to provide an update on matters related to the Project and thereafter decided to issue the Corrigendum. That decision was based on ECA management's perception that the Inspection Panel expected the Corrigendum to be issued,<sup>9</sup> and its concern about the seeming delay in the issuance of the Inspection Panel's report. In late July 2008, ECA management sought clearance for issuance of the Corrigendum from a Managing Director, OPCS and the Legal Vice Presidency. The Corrigendum, originally drafted in February 2008, was not revised at this time.

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<sup>8</sup> On April 8, 2008, the Bank received a letter from Albanian Minister of Public Works stating Government agreement that demolitions would henceforth focus only on new construction. That agreement was the result of Bank discussions with the Albanian Government which began in September 2007 in the course of the Inspection Panel investigation.

<sup>9</sup> It should be noted that the Inspection Panel disputes this contention and denies taking any position with ECA management on the need to issue the Corrigendum.

On August 1, 2008, ECA management received OPCS clearance for the Corrigendum, in the absence of the OPCS Vice President. On August 14, 2008, in the absence of the Acting General Counsel, clearance on behalf of the Legal Vice Presidency was provided. On August 27, 2008, in the absence of the responsible Managing Director, another Managing Director provided clearance. On September 2, 2008 the Corrigendum was issued.

## **Analysis**

4. With the benefit of hindsight and the foregoing review, it appears self-evident that management's failure to correct the error in the Albania PAD at the Board when the opportunity presented itself represents at best a significant lapse in judgment. Their failure promptly to rectify the error upon having it brought to their attention in late 2007/early 2008 by the Inspection Panel compounded the problem. Finally, their belated recognition in July 2008 that the Inspection Panel might accord the error much greater significance than they had appears to have led to a defensive push to circulate the Corrigendum without giving due attention to the content or context of the document as it would appear to its primary audience, the Executive Directors.

5. Our review has not led to a clear explanation of why the correction of the Albania PAD error and clarification that no moratorium existed, which had been added to the opening statement to the Board the evening before the Board presentation, was struck by ECA management moments before the opening statement was read. During our interviews, two possible explanations for the omission were offered. First, the corrective language was simply thought to sound awkward, and the editor did not appreciate its significance. Second, they were under the impression that the Albanian Government had agreed to a moratorium in principle, though formal written confirmation might not yet have been received. Either explanation to us undervalues the importance of ensuring that the Executive Directors have full and fully accurate information upon which to base their decision-making. While the circumstances that led to the non-correction of the error on the Board date may be unusual and idiosyncratic, they raise a broader, "tip of the iceberg" concern regarding the confidence Executive Directors can place in Project Appraisal Documents ("PADs") more generally, as these are the primary documents on which they rely to inform their decisions on projects.

6. With regard to staff members' subsequent failure to speak up about the lack of a moratorium agreement and the Albania PAD error, it should be noted that several ECA staff and Project team members who attended the June 2005 Board presentation did not recall any language omitted from the opening statement when read. Others remained themselves under the misimpression that a moratorium was in fact in place. The original TTL assumed that the error would be addressed in another context and thus did not question ECA management about the correction being struck from the opening statement.<sup>10</sup> Indeed, the Project team and the CMU remained confused for over two years about whether or not a moratorium agreement with the Albanian Government actually existed, as evidenced by the continued erroneous reference to a moratorium in

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<sup>10</sup> It should be noted that this was the TTL's first full Board presentation.

the July 2007 Aide-Memoire and failure to address the Albania PAD error in the September 2007 Management Response to the Inspection Panel. These errors and communications failures may be attributed to a combination of factors, including the complex nature of the Project,<sup>11</sup> challenges implicit in managing a project requiring such a diverse set of skills and specialties, significant staff turnover at all levels (TTL, Sector Manager, Country Manager and Country Director) and the relative inexperience of certain staff on the Project team. That these factors—project complexity, staff rotation, and varying degrees of staff experience-- are not uniquely associated with the Albania Project reinforces the fact that these failures may not be confined to the specific facts of this case and could have broader ramifications, particularly when it comes to assuring the accuracy of PADs when they are presented to the Board.

7. With respect to the decision first not to issue the Corrigendum in March 2008 and then later in July 2008 to move forward with its issuance, we note that those decisions appear to have been made quickly and not thoroughly vetted, thereby compounding the effect of previous errors. The Corrigendum, originally drafted in February 2008, provided an insufficient explanation of the implications of the Albania PAD error and what remedial actions were being taken in response. Moreover, as acknowledged by ECA management, the Corrigendum contains a further inaccuracy in that it suggests that the Region brought the Albania PAD error to the attention of the Inspection Panel, whereas the reverse is actually true. Inadequate review by ECA management of the content of the Corrigendum when the matter was revisited in the summer of 2008 thus resulted in the Corrigendum being issued without due consideration for what would be most informative to the Board.

### **Lessons Learned**

8. At least three lessons can be drawn from the foregoing discussion. First, to the extent the factors that led to the introduction and non-removal of the error in the Albania PAD are not necessarily unique to that Project, and without overgeneralizing on the basis of the facts of this case, management nevertheless might consider undertaking a more systematic review of current institutional processes that are supposed to ensure the quality and accuracy of PADs.<sup>12</sup> While our review was confined to the specific facts surrounding the correction of the Albania PAD, PADs are typically drafted and edited by several staff working on a project team, with division of labor among the various sections. Experience suggests that in practice there may be no clearly accountable person who ensures final quality-control of the document. More systematic checks and robust quality control mechanisms might inspire greater confidence that future errors of this nature would not arise. The fact that as far as we know this is the first instance of correction of a PAD substantive error subsequent to Board approval does not mean that no other PAD may contain a similar infirmity. To the contrary, the fortuity that the

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<sup>11</sup> The Project is particularly complex in that it involves several diverse components, including solid waste, soil remediation, water supply and sanitation, ports, involuntary resettlement and special planning for community-based coastal villages.

<sup>12</sup> OPCS has confirmed to us that it also believes a review of the quality-control processes for PADs may be worthwhile.

Inspection Panel discovered the error in this case and brought it to staff and ECA management's attention leaves open the possibility that uncorrected substantive errors exist or may arise in other PADs. This case raises an issue of trust and confidence in PADs more generally, given the Board's justifiable reliance on them as a primary source of information to inform its decision-making. Thus, the first lesson is that there may be gaps in regional management oversight of the PAD quality control process that need attention. Management therefore may want to consider a review of PAD quality control, in order to provide stronger assurance to the Executive Directors and itself the Board has and will have reliable information before it when considering a project.

9. The second lesson is that a failure to correct a substantive error as soon as possible once discovered is likely to compound the problem. It is often the case that how decision-makers respond to an error becomes more the subject of focus than the original mistake. The fact that ECA management in this instance did not correct the Albania PAD error, either immediately upon discovery just prior to the Board presentation date or immediately after the Inspection Panel brought it to their attention, may raise questions about the motivation for inaction that are potentially more far-reaching than whatever short-term consequences may have resulted from acknowledging the error up front. A relationship of trust between the Board and management is an essential element of effective internal governance.. A culture of high professionalism in which management and staff exercise judgment to readily admit and rectify mistakes when they occur is a cornerstone of that relationship. Again without overgeneralizing based on this one case, but recognizing the potential for erosion of long-term trust if the question is not addressed head-on, it may be appropriate for senior management to take steps to reinforce with the Board and with staff the importance it attaches to proactive correction of substantive errors in those hopefully extremely rare instances when they arise, particularly vis-à-vis the Board.

10. The third lesson is that the circumstances that led to the issuance of an insufficiently transparent Corrigendum may indicate the need for managers—including senior managers—to review the sufficiency of their internal clearance processes for Board documents, particularly when they are acting for each other. Senior management review constitutes the final step before a communication/document is sent to the Board. At times staff provide documents for senior management review with a minimum of time before the document must be issued. That ironically was not true in this case, although the belated sense of urgency that arose in July/August 2008 prompted a push for quick clearance of the Corrigendum by various parties once the decision was made to issue it. Given that the instant case is highly unusual if not unique, in that ECA sought to correct a substantive error in the Albania PAD several years after the fact, the situation called for an unusually detailed and transparent explanation of the circumstances behind the Corrigendum, perhaps coupled with other points of engagement with the Board at management's initiative . The fact that the document did not explain the highly unusual situation should have attracted attention before it went out. Indeed, we are informed that it did to an extent, but all of the clearing parties (Managing Directors, Corporate Secretary's, Legal, and OPCS) signed off on the document, with misgivings expressed by some but ultimately with deference that the other clearing parties knew what they were

doing in clearing it in that form. No one appeared to have questioned whether the Corrigendum provided the Board with a sufficient explanation of the circumstances behind its issuance or its implications. That the Corrigendum was cleared at the height of the summer vacation season, when many managers were away, is a partial explanation but not an excuse for the result. A more transparent Corrigendum would not have cured the other shortcomings noted above. However, a more active and substantive review of the document before it was circulated may have led management to handle the situation more effectively vis-à-vis the Board.

11. Finally, I would like to support Mr. Alzetta's expression of concern that a PAD, through use of a routine corrigendum, might be amended due to a substantive error after the project it describes has been considered by the Executive Directors. I believe such a situation to be extraordinary, and not a precedent to be followed in the future. Should such a situation arise again, despite remedial steps that may be taken to prevent a recurrence, it is recommended that the implications be considered as soon as practicable by senior management, following which suitable action should be discussed with the Executive Directors prior to the issuance of any appropriate formal document to the Board. That said, to me this episode—and avoiding any repeat—is ultimately not so much about process as it is about the exercise of judgment and the need to reinforce an institutional culture that places a high premium on the value of transparency with the Board and on going the extra mile to ensure it.

Scott B. White  
Acting Vice President and General Counsel  
Legal Vice Presidency