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***REPORT ON A CONSULTANCY IN  
ALBANIA WITH DRAFT LEGISLATION  
WHERE APPROPRIATE***

*by*

***Norman J. Singer***

***April 1995***



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# **REPORT ON A CONSULTANCY IN ALBANIA WITH DRAFT LEGISLATION WHERE APPROPRIATE**

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## **ON THE FOLLOWING MATTERS:**

- 1. Creation of an Informal Immovable Property Tribunal**
- 2. Organization of the Survey Profession;**
- 3. Buying and Selling of Immovable Property;**
- 4. Registration of “*Trual*” Inside the Yellow Line;**
- 5. Conversion of “In Use” Property to Ownership;**
- 6. Determination of the Sources of the Civil Code; and**
- 7. Land Registration and the Council of Europe**

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nsinger@ua1vm.ua.edu

Terra Institute, Ltd., has provided technical assistance in Albania since 1994. Under both the Land Legislation and Policy Project (LLPP) and the Land Markets in Albania Project (LMAP), the Institute has archived almost 50 reports, papers, draft legislation, and commentaries on land legislation, land registration, land tenure, and other land market-related activities in Albania.

The report presented in this document, "Report on a Consultancy in Albania with Draft Legislation Where Appropriate," by Norman J. Singer, was submitted to Terra Institute, Ltd., for the Land Markets in Albania Project (LMAP), on 21 April 1995.

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# **REPORT ON A CONSULTANCY IN ALBANIA WITH DRAFT LEGISLATION WHERE APPROPRIATE**

by

**Norman J. Singer\***

## **1. IMMOVABLE PROPERTY TRIBUNAL: DRAFT COMMENTARY AND ACT**

### **1.1 INTRODUCTION**

During the March 1995 visit we raised the possibility of submitting a revised Immovable Property Tribunal Act for consideration. The Minister of Agriculture has been in favor of establishing an informal tribunal through which land disputes would pass. We had decided, as a matter of strategy, that it would be best at this time to try and provide a stronger justification for the need of the Tribunal.

The justification for the Tribunal was to assess the kind of activities that were existing in the District Courts at this time. A brief analysis in March indicated that the courts were in fact beginning to receive numbers of petitions on land matters. It was not clear how the courts were processing these disputes. It was thought that an analysis in a number of courts (three to five) throughout the country might show that the activities were going to impose a serious burden on the courts - thus justifying the Tribunal. Secondly, we thought we might review the court statistics kept by the Ministry of Justice to see whether there was any indication of heavy land dispute activity.

Therefore, a letter was prepared for the Minister of Agriculture to send to his colleague the Minister of Justice. This was to see if we could get permission to do the court observation and review the statistics. In the past the Ministry of Justice had rejected the idea of administrative or special jurisdiction tribunals and had generally been unwilling to extend itself to the Project.

The Minister of Agriculture indicated that there had been a change of attitude in the Ministry of Justice and suggested that I go to see the Deputy Minister directly to see if there was a new spirit of co-operation. A meeting was set up and indeed the Deputy Minister was most co-operative. He approved, on the spot, our proposal and it was anticipated to do the background assessment preparing for some fieldwork on my next visit. (See Memorandum to Rachel Wheeler in Part 8 of this Report.)

The Deputy Minister of Justice asked to see a draft of the Immovable Property Tribunal Act. I have enclosed a revised draft and a brief commentary.

### **1.2 COMMENTARY AND EXPLANATION OF THE TRIBUNAL ACT.**

The Immovable Property Tribunal Act (in section (c) below) is one of the components of the set of legislation that will assist in the development of a functioning property registration system. Because it is highly likely that there will be a significant number of cases involving immovable property over the years, it was felt necessary to create a separate tribunal to deal with immovable property matters. This is a special, and informal, court-like institution which will be in existence in each District with a wide jurisdiction in matters relating to immovable property.

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\* Norman J. Singer, Legal Consultant, Charles O. Stokes Professor of Law, and Professor of Anthropology, at the University of Alabama, USA, for Terra Institute, Ltd., Mount Horeb, Wisconsin, USA, 21 April 1995.

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The Tribunal is created to deal with the cases involving immovable property, but it is not set up to avoid the regular courts from hearing any immovable property matter that involves an issue of law. These matters, if the disputants feel it is necessary, will be able to be heard by the appropriate appellate court as a matter of judicial review.

The reality in matters of immovable property is that an overwhelming percentage of cases involve factual issues, like the location of a border or whether a tenant is still in possession, etc. It is fundamental that a resource be made available to persons with such disputes. However, it is also fundamental that such disputes are not given license to clog up existing court agendas. Thus, it is proposed, through this legislation, that there be created a special informal court, called an Immovable Property Tribunal, which hears a broad range of immovable property disputes.

An Immovable Property Tribunal will be set up in each of Albania's thirty-six Districts. Each Tribunal will have a Chairman who will have both the qualifications of a trained legal person and the civil service status of a judge in a court of first instance. Each Tribunal shall also have two Assessors who shall be upstanding persons of their community, who shall not have a civil service status, but shall receive an allowance provided by the Ministry of Justice for the service they render as Assessors on the Tribunal. All person so selected shall serve for a non-renewable term of five years.

The two Assessors and the Chairman sit as a single panel for each of the disputes brought before the Tribunal. The decisions of the Tribunal will be made by majority vote unless there is an issue of law involved; then the Chairman shall have the controlling vote.

Each Tribunal shall also have a Clerk (and as many assistant clerks as are necessary) who is responsible for all of the administration of the Tribunal including providing all relevant persons with notice.

The jurisdiction of subject matter, set out in section 10, is meant to be broad and to capture as many immovable property related matters as possible. This includes issues relating to the distribution of immovable property which started in 1991 and is meant to include all issues involving ex-proprietors that have to be processed through a court. The Act explicitly includes all issues relating to registration.

The process of the Tribunal is designed to expedite cases. The Chairman has the authority to attempt to conciliate a matter at any stage. The Chairman can also call for a pre-trial conference to elaborate on specific issues that need to be clarified by special evidence or for any other reason that he so determines. All hearings are open, but there is the possibility of closing the hearing, with the agreement of the parties, if the Chairman feels that statements of a witness should not be taken publicly. However, the overall process is designed to be informal and each of the parties is given the chance to present the evidence that is deemed relevant. There are no rules of evidence applicable to a hearing in the Tribunal. However, the Chairman does have the authority to make a determination that certain evidence is irrelevant to the dispute at hand and need not be heard.

Although the purpose of the Tribunal is to have matters heard informally, if a party to a dispute chooses, legal representation is possible. Experts in immovable property matters can participate and the parties are encouraged to use persons who have special training or knowledge to help resolve the dispute at hand.

The procedure for filing a petition, answering it and filing counter-petitions is presented in the Act with all the necessary standards for notice, etc. There are requirements relating to how much time can elapse between the filing of a petition and actual trial, twenty-one days. The language of the Act is set up to require the schedule to be met whenever possible and for that purpose there is included a procedure which allows additional persons to be appointed as Presiding Judges and Assessors who will comprise extra panels in order to facilitate meeting the time schedule which is set out in the Act.

Judgments are rendered by majority vote except, as noted, when an issue of law is present. Any party has the right to petition for the reconsideration of a decision within ten days of the issuance of a final judgment. A written opinion dealing with the petition for reconsideration must be issued. The Tribunal also has the power to issue a default judgment when the accused does not appear. In this case, an accused loses both the right to petition for reconsideration and the right of judicial review.

The Tribunal can also order the accused to pay money damages to a petitioner in installments if the circumstances so require.

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Finally, the Tribunal shall keep records of all activities and charge fees. The fee schedule is set up to be reviewed and changed periodically.

### **1.3 DRAFT OF THE IMMOVABLE PROPERTY TRIBUNAL ACT**

#### **PARLIAMENT**

#### **LAW**

**On the Creation and implementation of an  
Immovable Property Tribunal  
for the settlement of disputes relating to issues  
involving immovable property,  
in conformity with Article 16 of Law nr. 7491,  
dated 29 April 1991 on Main Constitutional Provisions,  
proposed by the Council of Ministers**

#### **THE PARLIAMENT OF THE REPUBLIC OF ALBANIA HAS DECIDED:**

#### **PART I DEFINITIONS**

##### **Section 1**

“accused” means the person defending against the accusation of wrongdoing;

“answer” means the papers filed by the person(s) accused of the wrongdoing;

“Chairman” means the presiding judge of each District’s Tribunal and the chief administrator of the Immovable Property Tribunal in a District;

“clerk” means the officer in charge of the court records;

“counterpetition” means a claim by an accused against a petitioner;

“default” means failure to defend against the petitioners claim by failing to answer or to appear for trial;

“immovable property” means land, water sources, buildings as well as immovable objects defined in the Civil Code;

“judgment” means the decision of the tribunal;

“Minister” means the Minister responsible for the immovable property administrative system of Albania;

“petition” means the paper filed by the person making the claim;

“petitioner” means the party commencing the case;

“subpoena” means an order of the court requiring a witness to attend or testify at a trial;

“summons” means the paper issued by the clerk of the tribunal which orders the accused to admit or deny the petitioner’s claim.

#### **PART II LOCATION AND STAFFING OF TRIBUNALS**

##### **Section 2**

1) There shall be one Immovable Property Tribunal in each District in Albania, located in the administrative center of the District.

2) The Tribunal of each District may also sit, at the discretion of the Chairman of the District Immovable Property Tribunal, in the principal town of any Komuna when there are disputes that involve immovable property located in one of the outlying areas.

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### **Section 3**

- 1) The Chairman and Assessors who will sit on the Immovable Property Tribunal shall be appointed by the Minister for a nonrenewable term of five years.
- 2) The Chairman shall be considered as a member of the judiciary, as an ordinary employee of the Ministry of Justice and shall receive the pay and benefits equal to a District Court Judge.
- 3) The Assessors shall receive an allowance, to be determined by the Ministry of Justice for each case in which participation takes place.

### **Section 4**

- 1) Each panel shall consist of a Chairman and two Assessors which shall hear the dispute over which the Tribunal has jurisdiction as set out in section 10.
- 2) The Chairman shall be considered as a member of the judiciary, as an ordinary employee of the Judiciary Department and shall receive the pay and benefits equal to a District Court Judge.
- 3) The Assessors shall be persons who do not necessarily have a background of legal training, but who do have the qualifications as set out in section 5 (2) and (3) below.
- 4) The Assessors shall not be considered as members of the judiciary and they shall receive an allowance, to be determined by the Judiciary Department for their participation on the Tribunal as Assessors.

### **Section 5**

- 1) The qualifications considered appropriate for appointment as Chairman of the Immovable Property Tribunal shall be legal training, an understanding of issues relating to immovable property, general leadership abilities and the possession of skills necessary for the resolution of disputes.
- 2) The qualifications for appointment as an Assessor shall be residence in the District where the Immovable Property Tribunal is located, a reputation of high status in one's community for fairness, considered as a wise and learned person in terms of culture and social practices who is looked to for decisions, a special knowledge in matters of immovable property and an accepted sense of integrity.
- 3) If possible, the person serving as an Assessor should be one of the elected officials from a village.

### **Section 6**

- 1) Each Immovable Property Tribunal shall have appointed a Chairman in each District, who shall be the chief administrative officer and preside in all hearings and as many Assessors for each District as are necessary to deal with the disputes of that District.
- 2) The Chairman of each District's Tribunal will sit on all Panels as the presiding judge with two of the appointed Assessors resident in the District where the dispute is being heard.

### **Section 7**

- 1) To ensure that this schedule is adhered to special Immovable Property Tribunal Presiding Officers and additional Assessors shall be appointed by the Chairman of the District Immovable Property Tribunal, in consultation with the Minister, to assist with hearings, if the schedule set out in section 23 cannot be followed.
- 2) Special Presiding Officers shall receive the same allowance as an Assessor.

### **Section 8**

Each District Immovable Property Tribunal shall have a Clerk and one or more Assistant Clerks as is determined by the amount of activity that takes place in each District Tribunal.

### **Section 9**

- 1) to receive the petitions and counterpetitions and other documents of persons with claims which come under the jurisdiction of this Act;
- 2) to set the location and schedule for hearing disputes by the Tribunal;

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- 3) to ensure that each person who should receive notice of completed or pending action of the Tribunal are so notified;
  - 4) to issue all subpoenas for the discovery of evidence;
  - 5) to notify persons who have been appointed special presiding officers or Assessors of their appointment and assignments;
  - 6) to co-ordinate all activities with the Assistant Clerks who are located in the Districts to ensure that the procedures are followed; and
  - 7) to perform any other function that ensures the procedures of the Tribunal operates smoothly.

### **PART III**

#### **Section 10**

The Immovable Property Tribunal shall have primary jurisdiction over proceedings instituted where parties have conflicting claims to immovable property, including the following issues:

- a) actions involving claims of a right to ownership, a right of usufruct and/or a right to possession in respect of any immovable property;
- b) demarcation of immovable property which is connected to activities related to the subdivision of parcels and any matter for which demarcation or surveying must be carried out;
- c) the registration of immovable property;
- d) the use, development and capacity of immovable property;
- e) partition of holdings in which potential multiple ownership is involved;
- f) immovable property valuation and issues involving compensation for immovable property;
- g) removal from possession or eviction from immovable property;
- h) expropriation of immovable property by the government;
- i) agricultural or agro-industrial contracts of lease;
- j) transfer of property in contravention of the applicable law;
- k) exchanges, illegal subdivisions and other irregularities involving improper division or partition of immovable property;
- l) succession to immovable property;
- m) possession of both urban and agricultural immovable property;
- n) use and development of immovable property for purpose of conservation and development and the use of natural resources;
- o) the recovery of publicly held immovable property from a person in possession; and
- p) all other matters relating to immovable property.

#### **Section 11**

The parties shall have access to conciliation at any stage of a dispute and if possible they shall, in collaboration with the Chairman, shorten the trial and deliberations in order to reduce the duration of the process.

#### **Section 12**

- 1) In the course of the proceedings, the Chairman may unilaterally, if he deems it appropriate, issue an order which is designed to expedite the process.
- 2) The parties may agree with the Chairman to abbreviate and concentrate deliberations with a view to reducing the duration of the process.

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**Section 13**

The hearings of the Immovable Property Tribunal shall be informal, the object being to dispense justice promptly between the parties. However, in order to allow for the organization of the system, a structured hearing system, with pre-trial information and conferences shall be part of the procedure.

**Section 14**

With the agreement of the parties involved, the judges may close the proceedings for the examination of witnesses, for the taking of statements or at any time such a course is deemed appropriate.

**Section 15**

- 1) Any party may participate in the hearing in person or, if the party is a juridical person, by a duly authorized legal representative.
- 2) Whether or not participating in person, any party may be advised and represented, at the party's own expense, by a legal practitioner, or where allowed by law, any other representative.

**Section 16**

- 1) Where technical evidence is required, experts deemed appropriate by the agreement of the parties to the action may be brought to testify from government or non-government bodies or any other source deemed appropriate by the parties to the action and the judges.
- 2) Where the parties cannot agree on the appropriateness of a particular individual, and the judges feel that the person in question is the most appropriate, the Chairman may call in a neutral person, acceptable to the parties, who shall determine whether or not the selection of the expert is appropriate.
- 3) The judges are not obligated to accept the statements of the experts brought to testify in any matter before the Tribunal as the testimony is merely the opinion of the experts.

**PART IV PROCEDURE FOR THE TRIBUNAL****Section 17**

- 1) A case shall begin when the petitioner files with the Clerk of the Tribunal, in the District where the immovable property in question is located, a short and plainly written statement showing what the petitioner claims and why he/she claims it.
- 2) The petitioner may combine as many claims in one case as may exist against an accused and more than one accused may be included in the case if the petition includes reference to more than one person.

**Section 18**

- 1) The accused shall file a short and plain reply showing what the accused admits, what is denied and why it is denied.
- 2) An answer may not be made by a motion to dismiss.
- 3) The court shall be very lenient in the allowance of changes or amendments to petitions, answers and counter-petitions when it is necessary to assist in reaching a fair and equitable judgment.

**Section 19**

- 1) If the accused believes there is also a claim against the petitioner, it shall be filed as a counterpetition at the office of the Clerk, in the District where the original petition was filed, together with the answer.
- 2) The clerk shall cause a copy to be delivered to the petitioner.
- 3) Failure of the accused to make a counter-petition which is based on events which give rise to the petitioner's claim will not of itself prevent the accused from raising such a claim in another case so long as the accused either wins his case in the Immovable Property Tribunal or prevents the judgment of the Tribunal from becoming final by filing a notice for judicial review as provided in 39.

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## **Section 20**

- 1) Upon the filing of a petition, the clerk shall issue a summons to each accused through personal service or through the postal system, whichever is more practicable in the situation of the case.
- 2) If the summons is personally served on the accused, the server shall locate the person to be served and shall deliver the summons and a copy of the petition and any accompanying documents to the person to be served. When the summons and the petition have been personally delivered, the server shall endorse the date, place and time of delivery on a copy of the summons and return it to the clerk who shall make note on the appropriate agenda.
- 3) When the server is unable to personally serve the summons and a copy of the petition within fourteen days, the server shall endorse that fact and the reason for nondelivery on the summons and return the summons and the petition to the clerk who shall make note on the appropriate docket, and immediately notify the petitioner, in the most practicable manner, of the inability to deliver the summons and petition. The fact of notifying the petitioner shall be made on the appropriate docket.
- 4) If the clerk elects to serve the summons and the complaint by registered mail with a return receipt, the server shall endorse that fact on a copy of the summons and return it to the clerk who shall make an entry on the appropriate docket.

## **Section 21**

- 1) All time periods shall be measured by starting to count on the first day after the petition was served on the accused or on the first day after the judgment was entered or on the first day after any other event happens by which this Act starts the running of a time period.
- 2) If the last day is not a working day, then the last day is not considered to have arrived until the next working day has arrived.

## **Section 22**

- 1) The accused shall file his answer or counter-petition in the office of the Clerk, where the original petition was filed, within 14 days after a copy of the summons and petition have been delivered to him by an official server or a person otherwise authorized to make service.
- 2) If the service has been made by registered post with a return receipt required an answer must be filed within 14 days of the receipt of the summons and petition which shall be calculated from the time the receipt is signed.
- 3) The accused does not have to have a copy of his answer personally served on the petitioner unless his answer contains a counter-petition.

## **Section 23**

- 1) The Chairman, together with the Clerk, will determine the schedule of disputes to be heard. The time schedule set out in this Act, shall be closely followed, whenever possible.
- 2) Under no conditions shall a case be heard more than one month after the summons and petition are delivered to the accused.

## **Section 24**

The parties to any dispute arising under this Act are encouraged to make a voluntary exchange of information before the trial, but under no circumstances shall the Tribunal require such an exchange.

## **Section 25**

The Chairman of the Tribunal shall confer with the parties before any trial takes place, whenever it appears that such a conference might simplify the issues or shorten the hearing or lead to a voluntary exchange of information which might promote a settlement of the dispute.

## **Section 26**

If a pre-trial conference is held the Chairman shall:

- a) set the time and place of the proposed conference;

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- b) give reasonable notice to all persons entitled to notice which includes all persons who should be present at the conference;
  - c) include in the notice anything which the Chairman feels is desirable to assist in expediting the proceedings; and
  - d) issue an order based on the result of the pre-trial conference which is aimed at either terminating the dispute prior to trial or to narrow the issues which shall be heard at the trial;

### **Section 27**

- 1) The Chairman shall set the time and place of a hearing and give written notice in advance to all parties and persons who have petitioned to intervene in the dispute.
- 2) The notice must include a copy of any order issued by the Tribunal in the matter under consideration.
- 3) The notice may also include any other matters the Chairman considers important to assist in expediting the proceedings.

### **Section 28**

- 1) If a party to the dispute fails to attend or participate in either a pre-trial conference, a trial hearing, or any other meeting called to discuss the matter at issue, the Chairman may serve written notice on all parties of a proposed default order. This notice shall include a statement of grounds for such an order.
- 2) If after fourteen (14) days no answer has been received, as accused shall be given an additional fourteen days (14) from the time the accused receives that notice to state the reason why a response has not been made to the accusation. If no satisfactory response is received by the end of the second fourteen (14) day period, the members of the panel may then issue a default order.
- 3) Within seven (7) days after the service of a proposed default order, the party against whom it has been issued may file a written notice requesting that the proposed default order be vacated and he shall state the reasons for such request.
- 4) During the time within which a party may challenge a proposed default order, the Chairman shall adjourn the proceedings until the time for challenge has passed.
- 5) The Chairman shall either issue or vacate the default order promptly after the expiration of the time within which the party may file a written notice under subsection (3).
- 6) After issuing a default order the Chairman shall conduct any further proceedings necessary to complete the matter that was before the tribunal without the participation of the party who was found to be in default.

### **Section 29**

- 1) The Chairman shall grant a petition for intervention by any person in a dispute scheduled to be heard by the Tribunal if:
  - a) the petition is submitted in writing to the Chairman, with copies distributed to all parties who are named by the Chairman as persons interested in the outcome, at least three days before the hearing is scheduled;
  - b) the petition states facts that demonstrate the petitioner's interest may be substantially affected by the proceeding or that the petitioner qualifies under a provisions of law to intervene in the matter; and
  - c) the Chairman determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the petition.
- 2) The Chairman may grant a petition for intervention at any time, upon determining that the intervention sought will serve to assist in a fair disposition of the dispute and will not impair the orderly and prompt conduct of the proceedings.
- 3) If a petitioner qualifies for intervention, the Chairman may impose any reasonable conditions on the intervenor's participation in the proceedings either at the time the intervention is allowed or at any subsequent time as conditions may require.

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4) The Chairman must give notice to the petitioner and any party in interest of any decision allowing or denying intervention at least twenty-four hours prior to a scheduled hearing, specifying any conditions attached to an order of intervention and briefly giving reasons for the order.

### **Section 30**

The Chairman, on his own decision or at the request of any party, may issue a subpoena for discovery, for the protection of a party, or for other purposes which will make the process go more smoothly. These orders shall be in conformity with the Code of Civil Procedure or any other law relevant for such a matter.

### **Section 31**

A subpoena requiring a witness to attend and to testify at a trial shall be issued by the clerk, in the District where the petition was filed, on the request of one of the parties.

### **Section 32**

1) A trial shall be scheduled to take place, whenever possible, no more than twenty-one days following the answer of the accused and in cases where a counterpetition or petition for intervention is filed, whenever possible, no more than twenty-one days following the answer to the counter-petition or decision whether the intervention of an additional person will be allowed.

2) At least fourteen days before the scheduled trial date, the Clerk, in the District where the petition was filed, shall notify the parties of the time and place of the trial.

3) At the trial, whether or not there is a lawyer who represents either party, each party shall have the right to put questions to the other party or witness.

4) An opportunity shall be provided for nonparties to present oral or written statements concerning the dispute. The parties then must be given a chance to question the non-party.

5) The members of the Tribunal, in their discretion, may participate freely in the examination of the parties and witnesses.

6) The Tribunal may receive properly certified written or recorded statements of witnesses or parties who are not present at the trial.

### **Section 33**

1) There shall be no rules applicable to the hearing which limit the presentation of evidence the parties feel is relevant to the case at hand.

2) The Chairman, may, however, limit the presentation of evidence which is deemed irrelevant, immaterial, unduly repetitious or in any other way delays the normal progress of the hearing.

3) Any part of the evidence may be received in writing if doing so will expedite the hearing without prejudicing the interests of any party.

4) Any documentary evidence can be presented in the form of a copy, but if any party requests, an opportunity must be given to compare the copy with the original, if the original is available.

### **Section 34**

1) All decisions of the Tribunal, whether the final judgment or interim matter, shall be made by majority vote of the three sitting judges, the Chairman and two Assessors.

2) However, the Chairman shall have a deciding vote on all questions of law.

### **Section 35**

1) Any party to a dispute which has been before the Tribunal may, within ten days after the issuance of a final judgment, file a petition for reconsideration, stating the specific grounds upon which the request for reconsideration is made.

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- 2) The petition for reconsideration must be disposed of by the same panel of persons which issued the judgment, if those persons are available and if they are not all available by as many as are available who made the first decision participate a second time.
  - 3) The Chairman shall issue a written opinion denying the petition, granting the petition and dissolving or modifying the judgment or granting the petition and issuing an order for further proceedings.
  - 4) The petition for reconsideration is deemed to have been denied if the Chairman does not issue a written decision within twenty (20) days from the time the petition for reconsideration was filed.

#### **Section 36**

- 1) When an accused does not answer within the required time or fails to appear when the case is set for trial, after a fourteen (14) day wait following the second notice issued under section 29 (2), the petitioner will be required to present evidence in support of his claim, if the members of the Panel find the evidence supports the petition, the Clerk, in the District where the petition was filed, shall enter a judgment against the accused.
- 2) If a default judgment has been entered, the person against whom such a judgment has been entered does not have the right to petition for reconsideration of the judgment.
- 3) If the accused does not appear when judgment is found against him, he loses the right to petition to a higher court for judicial review in accordance with the provisions of Section 40.

#### **Section 37**

Enforcement of any final judgment may proceed through any means available under the law, regulations or rules and deemed appropriate and in force under the law of Albania.

#### **Section 38**

- 1) The Tribunal may order that any final judgment, when the payment of money is involved, shall be paid in installments by setting a schedule of payments over a stated period of time.
- 2) The Tribunal may also revise the schedule of installment payments when the paying person, after presenting to the Tribunal evidence of the difficulty in making payment, has convinced the Tribunal that a rescheduling of payment is necessary.
- 3) Under no conditions may the installment system created for the payment of a monetary judgment be extended for more than three years.

#### **Section 39**

- 1) Judicial review may be sought after a judgment has been rendered, involving a matter of law, by filing a notice for judicial review in the office of the Clerk, in the District where the original petition was filed.
- 2) Judicial review is not available for disputes where the sole issue is the determination of compensation.

#### **Section 40**

- 1) The Tribunal shall maintain an official record of each proceeding that has taken place under this Act.
  - 2) The record shall consist of:
    - a) all notices issued by the Chairman;
    - b) any pre-hearing order;
    - c) any request made by any of the parties;
    - d) any petitions for intervention;
    - e) any written evidence submitted or received;
    - f) any judgment issued; and
    - g) anything else that has transpired since the initial petition was filed that has any bearing on the matter that has been before the tribunal.
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## **PART V MISCELLANEOUS**

### **Section 41**

There shall be fees payable to the Immovable Property Tribunal for the filing of a case and the costs which are necessary for the dissemination of any materials necessary for the clarification of the issues which are part of the dispute before the court and for the time spent.

### **Section 42**

The Minister may make Regulations in general to give effect to the purposes and provisions of this Act and in particular without compromising any general regulations, for prescribing the manner in which the procedure relevant to this Tribunal shall be carried out and for prescribing anything under this Act which may be allowed.

### **Section 43**

Any matter not provided for in this Act or in any other law in relation to the administration and procedure relating to the processing of disputes involving immovable property shall be decided in accordance with the principle of justice equity and good conscience.

### **Section 44**

- 1) All laws or portions of laws in conflict with the provisions of this Act shall be deemed to be repealed and anything done under a repealed law shall be deemed to have been performed under the provisions of this Act.
- 2) All pending cases prior to the commencement of this Act shall be dealt with in accordance with the provisions of the repealed laws.

### **Section 45**

The Act shall come into operation on a date to be fixed by the President published in the Official Gazette.

## **2. SURVEY AND MAPPING: A DRAFT ACT**

### **2.1 INTRODUCTION**

This is a first draft of a proposed private sector Survey Act which will need to be discussed and revised. The premise of the Act is that a basic structure for the surveying and mapping component of the registration of immovable property needs to be designed in an institutionally acceptable format. In order to deal with this, it is recommended (and therefore included in the proposed draft) that the Chief Surveyor be one of the Deputy Registrars. There would then be two Deputy Registrars, one that would head the survey and mapping section and a second one who would be in charge of the registration function. The positions would then be parallel throughout the country. Each District would have a Registrar who would be supported by two Assistants, one in charge of the survey and mapping function and the second in charge of the registration.

The importance of this proposal is that it keeps the integrated system intact, but at the same time it recognizes the importance of recognizing the professional qualifications and capacities necessary to maintain the system.

The draft sets up a licensing procedure through an examination and makes the attempt to create for Albania a system of private surveyors which will be able to be sustained over the years.

The draft makes no attempt to deal with Survey Regulations, although Section 60 (the last one in the Draft) sets out a number of areas in which Regulations might be drafted. Not all of the proposed areas for the Regulations are technical survey ones.

### **2.2 DRAFT SURVEY ACT**

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**REPUBLIC OF ALBANIA  
PARLIAMENT  
LAW  
ON THE LICENSING AND PROFESSIONAL CONDUCT  
OF SURVEYORS AND FOR REGULATING AND MAKING OF  
IMMOVABLE PROPERTY SURVEYS  
in conformity with Article 16 of Law nr. 7491,  
dated 29 April 1991 on Main Constitutional Provisions,  
proposed by the Council of Ministers**

**THE PARLIAMENT  
OF THE REPUBLIC OF ALBANIA  
HAS DECIDED:**

**PART I DEFINITIONS**

**Section 1**

“Association” means the Albanian Association of Immovable Property Surveyors;

“Board” means Immovable Property Board;

“Minister” means the Minister responsible for immovable property registration;

“Secretary” means Secretary to the Board

“survey” means a survey for the determination and demarcation of boundaries for parcels of immovable property in Albania and includes an aerial survey and a hydrographic survey;

“survey for public purposes” means any survey which the Chief Surveyor is empowered to carry out or to authorize under section 3.

**PART II ALBANIAN ASSOCIATION OF IMMOVABLE PROPERTY (Land) SURVEYORS**

**Section 2**

For purposes of this Act every person shall be considered to act as a surveyor who:

- a) performs or executes, or commences to perform or execute, any surface survey intended to form the basis of any plan or diagram which is to be attached to any instrument which is registered or intended to be registered under the Immovable Property Registration Act or any other act relevant to the registration of immovable property, whether or not the plan that is prepared is itself intended for registration;
- b) performs or executes, or commences to perform or execute any survey affecting the delimitation of boundaries or the location of any monumentation in connection with any immovable property for the purpose of registration of any instrument under the Immovable Property Registration Act, or any other act relevant to the registration of immovable property;
- c) certifies the correctness of any plan or diagram which purports to delineate or define the boundaries of any land, or which purports for any other purpose to delineate or define any line or lines.

**PART III CHIEF SURVEYOR AND THE IMMOVABLE PROPERTY SURVEY BOARD**

**Section 3**

There shall be a Chief Surveyor who shall be a surveyor and who shall, subject to the provisions of this Act and of the regulations subsidiary to this Act:

- a) direct and control all surveys for public and private purposes;
- b) examine all general and particular plans and diagrams of surveys before any registration of any immovable property is effected in accordance with the provisions of the Immovable Property Registration Act or any other Act which regulates the registration of immovable property, and approve such plans and diagrams if satisfied that such

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surveys have been carried out, and the plans and diagrams have been prepared in accordance with the regulations to this Act;

c) take charge of and preserve all survey plans and records;

d) cancel or amend or require any surveyor to amend, in accordance with the delegation from the Chief Registrar or through the Immovable Property Registration Act or any other relevant Act, any survey, plan or diagram found to be incorrect, outdated or inadequate;

e) prepare, certify and issue at the request of any person upon payment of the proper fees, copies of diagrams and documents filed within the Registry which are available to the public and copies of general plans and diagrams registered in any registry of immovable property.

#### **Section 4**

The Chief Surveyor shall be a public officer who shall work within the office of the Chief Registrar, be responsible to the Chief Registrar and have the rank of a Deputy Registrar.

#### **Section 5**

There shall be one District Surveyor for each District who shall work within the District Registry and shall be responsible to the Chief Surveyor and the Registrar in the District. The District Registrar shall carry out the functions of the surveyor enumerated in Section 3 above as they are delegated by the Chief Surveyor.

#### **Section 6**

The Chief Surveyor shall be the authority for the preparation and publication of the official topographical and general maps of Albania and no other person shall, without a license in writing issued by the Chief Surveyor, use any material which has been prepared or published under the authority of the Chief Surveyor in the preparation or publication of any other map.

#### **Section 7**

Neither the government nor the Chief Surveyor nor any other public officer shall be liable for any incorrect survey or work relating to the survey performed by a private surveyor, notwithstanding the fact that the survey or plan or diagram relating to the survey has been approved by the Chief Surveyor or any other public officer to whom the Chief Surveyor has delegated any of his functions as set out in section 3.

#### **Section 8**

There shall be an Immovable Property Survey Board which shall consist of five members including:

a) The Chief Surveyor;

b) Two surveyors appointed by the Chief Surveyor and approved by the Minister who shall serve a three year renewable term which shall end on December 31 of the third year; and

c) two surveyors who are members of the Surveyors Association, appointed by the Association and approved by the Minister who shall serve a two-year renewable term which shall end on December 31 of the second year.

#### **Section 9**

Any member of the Board may resign from the Board by submitting in writing a notice to the Minister.

#### **Section 10**

The Minister may, if he/she thinks it expedient, revoke at any time the appointment of any appointed member of the Board. A replacement appointee shall only be appointed for the remainder of the term of the previous member. The appointment shall be made from the same class of persons in the same manner as the appointment of the previous member of the Board.

#### **Section 11**

The Board shall meet at such times as may be necessary or expedient for the transaction of its business and the meetings shall be held at such places and times and on the days which the Board may determine.

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**Section 12**

The Board shall elect a Chairman at the beginning of each calendar year. The Chairman shall preside over the meetings and shall have no special position on the Board other than what is set out in this Act.

**Section 13**

A quorum of the Board shall be three.

**Section 14**

The decisions of the Board shall be by a majority of votes. The Chairman or other person presiding at the meeting shall have a second vote in any case where the votes cast are equal.

**Section 15**

Subject to the provision of this Act and the Regulations, the Board may regulate its own proceedings.

**Section 16**

The Minister shall provide to the Board such support staff, including a Secretary, accommodations and other services as appear to the Minister, in consultation with the Chief Surveyor to be necessary for the Board to be able to perform its designated functions.

**Section 17**

In addition to any other powers or duties conferred by this Act, the Board shall be responsible for:

- a) conducting or arranging for the administration of a local examination, where appropriate, for persons seeking registration as surveyors;
- b) granting licenses to practice surveying in Albania to persons who have qualified through the examination;
- c) keeping a Register of all licensed surveyors in accordance with section 23;
- d) taking disciplinary action against licensed surveyors in accordance with the provisions of this Act;
- e) hearing and attempting to resolve disputes between licensed surveyors or between a surveyor and a client;
- f) providing advice to persons on matters relating to immovable property survey practice that might be referred to the Board by the Minister, Chief Surveyor or other appropriate person.
- g) performing any other functions as are prescribed by this Act or its Regulations.

**PART IV ALBANIAN ASSOCIATION OF IMMOVABLE PROPERTY SURVEYORS****Section 18**

A body is established under the authority of this Act which shall be known as the Albanian Association of Immovable Property Surveyors which shall be a legal person, with perpetual succession and a seal, with power to acquire, hold and dispose of movable and immovable property, to sue and be sued and to do everything necessary for the purposes for which it is established.

**Section 19**

Every person who is a surveyor shall be eligible for membership in the Association.

**Section 20**

The general functions of the Association shall be:

- a) to promote and encourage proper conduct among surveyors;
- b) to suppress illegal, dishonorable, improper and objectionable practices;
- c) to preserve and maintain the integrity and status of the profession of surveying of immovable property;
- d) to provide opportunities for the acquisition and dispensation of knowledge in relation to immovable property surveying and related subjects;

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- e) to consider and suggest to the Chief Surveyor amendments in the law relating to surveys of immovable property;
  - f) to provide the means for the amicable settlement of professional differences; and
  - g) generally to promote the interests of the profession of surveying of immovable property and of the public in relation to surveys of immovable property and the practice of immovable property surveying.

#### **Section 21**

The affairs of the Association shall be managed by a Council consisting of seven members of the Association. These shall be a President, elected by the Association at a general meeting; a Vice President, who shall also be elected by the Association at a general meeting; one member appointed by the Chief Surveyor immediately before the annual general meeting and four other members elected at the annual general meeting of the Association.

#### **Section 22**

The Association in a general meeting shall have power to make rules or by-laws not inconsistent with the provisions of this Act for the regulation of its affairs and the conduct of its business.

### **PART V REGISTRATION AND LICENSING OF SURVEYORS**

#### **Section 23**

The Secretary of the Immovable Property Surveyors Board shall keep a Register known as the "Register of Immovable Property Surveyors" which shall contain the name and address of every surveyor registered under this Act, the qualifications by virtue of which he/she is registered and any other particulars that may be necessary.

#### **Section 24**

The Register shall be a public document and shall be open to any member of the public at the office of the Chief Surveyor during normal office hours.

#### **Section 25**

For a period of two years from the time this Act goes into force any person who has attained the age of twenty-one years, holds a recognized certificate granted outside of Albania or has regularly practiced as an immovable property surveyor in Albania for a period of at least five years before the date of his application or for a shorter period as the Immovable Property Survey Board may, in its discretion allow, and satisfied the Chief Surveyor that he/she is of good character may be registered as a surveyor under this Act.

#### **Section 26**

After two years from the time this Act goes into force, any person who has reached the age of twenty-one years, holds a recognized certificate or has passed any prescribed examination to the satisfaction of the Board of Immovable Property Surveyors and satisfies the Chief Surveyor that he/she is of good character may be registered as a surveyor under this Act.

#### **Section 27**

Every person wishing to be registered as a Surveyor must make application in writing to the Board enclosing with his/her application the document conferring or showing the qualification for registration and any other particulars that may be prescribed or as may be required by the Board in an individual case.

#### **Section 28**

As soon as possible after the receipt of an application under section 27, the Board shall consider the application and make a recommendation to the Minister whether or not the applicant should be registered. The Minister will then consider the recommendation and determine whether or not the applicant should be registered.

#### **Section 29**

The determination made by the Minister shall be communicated to the Board, which in turn shall communicate it to the applicant, and, in the case of a favorable determination, the Board shall direct the Secretary to register the successful applicant in the Register on the payment of the prescribed fees.

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### **Section 30**

Every person registered under Section 29 of this Act, upon payment of the prescribed fee, shall be entitled to a license issued to him/her by the Board. A public officer shall not be required to pay a fee in order to receive the license.

### **Section 31**

The license issued under the authority of this Act shall be in the form as may be prescribed. A certified copy of any license made be the Chief Surveyor or any public office with authority to make such a copy shall be prima facie evidence in any court or tribunal of the fact that the person is a licensed surveyor.

### **Section 32**

A letter signed by the Chief Surveyor stating that a person is not a surveyor shall be prima facie evidence in any court of law or tribunal.

### **Section 33**

Every license shall take effect on the date specified in the license as the date on which the license is to take effect and shall expire on the 31st of December of the second year after which the license has been issued. Every license shall be renewed upon the application and continued satisfaction of the conditions to be licensed of the holder and the payment of the prescribed fees.

### **Section 34**

Where the license has been lost, destroyed or mutilated it may be replaced by the Board by the issuance of a copy upon the application of the holder of the license and on the payment of the prescribed fee for a replacement license.

## **PART VI DISCIPLINE**

### **Section 35**

For purposes of this Act it shall be improper conduct if a person registered under this Act:

- a) certifies the accuracy of any survey or survey plan without having personally carried out or supervised that survey and the field operations and carefully examined and satisfied him/herself of the entries in any field book and the calculations, working plans or other survey records in connection with the survey or plan which may have been made by any person employed by him/her. In the case of an aerial survey a surveyor shall not be required to carry out or to supervise personally the taking or processing of any aerial photography.
- b) certifies the accuracy of any survey carried out by him/her or under his/her personal supervision if the operations of pegging and ground marking and all other requirements of the survey have not been carried out in accordance with the regulations to this Act.
- c) certifies the accuracy of any survey or survey plan knowing the same to be defective;
- d) repeatedly performs defective surveys or surveys to which adequate checks have not been applied;
- e) makes an entry in a field book or a copy of it or another survey record which purports to have been derived from actual observation or measurement in the field when in fact it was not so derived;
- f) supplies any information to the Chief Surveyor or one of his/her subordinates in connection with any survey, boundary or survey monument, knowing the information to be erroneous in any material particular;
- g) fails to perform without a reasonable excuse any duty imposed on a surveyor by the Regulations to this Act;
- h) makes an untrue report or memorandum of any survey; or
- i) is otherwise guilty of conduct unbecoming a person who is a registered surveyor.

### **Section 36**

A complaint that a person registered under this Act has been guilty of improper conduct may be made to the Board by any person in the prescribed form and shall be accompanied by such statement and affidavits as may be necessary to support the accusation of guilt.

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### **Section 37**

Where the Board is of the opinion that any complaint made against a registered surveyor might, if proven, call for the exercise by a disciplinary committee of any of the disciplinary powers conferred by section 39, the Board shall appoint such a disciplinary committee and shall refer the complaint to them.

### **Section 38**

A disciplinary committee shall consist of three members selected by the Board from among the registered surveyors, who are to the extent possible persons of standing which is senior to the person who is complained against.

### **Section 39**

In conducting hearings on complaints, a disciplinary committee should ensure that:

- a) adequate notice of the proceedings is given to the person against whom the complaint has been lodged;
- b) any party to the proceedings may come before the committee either in person or be represented by a lawyer or both.

### **Section 40**

At any hearing before the committee the Chairman

- a) may require the evidence to be given under oath. The Chairman of the committee shall have the power to administer the oath for the purpose of taking evidence.
- b) shall have the power to issue a summons to require any person to appear before the committee at a time and place specified in the summons in order for the person to give evidence on oath or to produce any document relevant to the subject matter of the hearing.

### **Section 41**

Any summons issued by the Chairman shall have the force as if it were issued by a magistrate and the attendance before the committee of a person so summoned may be enforced by a magistrate.

### **Section 42**

On hearing a complaint the disciplinary committee may either dismiss the complaint or make an order to discipline the accused person as they think fair. The possible sanctions may include:

- a) removal of the name from the Register
- b) suspension of the registration for a period not exceeding one year;
- c) payment of a fine not exceeding 25,000 lek; and
- d) payment, by any party to the proceedings, of the costs, or such sum as the committee considers a reasonable contribution towards the costs, incurred in connection with the committee proceedings.

### **Section 43**

Any payment ordered to be made under subsections (c) or (d) of section 42 may be enforced in the case of a person registered under this Act by the Board ordering his/her registration to be suspended until the payment which has been ordered is made.

### **Section 44**

Every order made by a disciplinary committee under section 41 or 42 shall be prefaced by the findings on the facts of the case and shall be signed by the Chairman of the committee.

### **Section 45**

Every disciplinary order from the committee shall be filed with the Secretary of the Board and shall take effect:

- a) where no appeal is brought against the order after the time for lodging the appeal has lapsed;
- b) where an appeal is instituted and it is either dismissed or brought to final judgment.

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The Secretary shall enter the order in the Register against the name of the person to whom the order relates when the proceedings against that person have been completed. In the case of a sanction, other than one in which only costs are assessed, the result of the disciplinary action shall be included in the Gazette.

#### **Section 46**

The Secretary shall remove the name of any registered person from the Register when:

- a) the person who is registered requests the removal; and
- b) a final order of the disciplinary committee, or of any court or tribunal to remove such name has been made.

Where the name of a person has been removed from the Register or the registration has been suspended, any license issued to that person shall cease to have effect for as long the person's name remains off the Register or the suspension remains in effect.

#### **Section 47**

The Board may restore a person to the Register when an application has been made and the Board determines that the person should be restored to the Register. In the case of a suspension, the Board may terminate the suspension if the period set out for the suspension has elapsed. In both cases notice shall be given to the Secretary to reinstate the person's registration. The Secretary shall reinstate the person to the Register and inform the public through a listing in the Gazette as soon as is feasible.

#### **Section 48**

- (1) The Board may order the name of a surveyor to be removed from the Register if it is satisfied that a license or certificate granted outside of Albania has been revoked or cancelled by the authority which granted the license or the certificate.
- (2) If a license or certificate has been suspended outside of Albania by the authority that granted it, the Board may suspend the registration of a surveyor so affected for the same period or for any unexpired portion of that period.
- (3) Notice in writing by the Secretary shall be given to a person who is affected by a removal from the Register that comes about because of a situation that arises under subsection (1) or a removal from the Register under subsection (2) and the removal or suspension shall not take effect until the person so affected receives written notice.

### **PART VII OFFENSES AND PENALTIES**

#### **Section 49**

Any person who is:

a) not licensed under this Act, but uses or causes to be used or permits to be used any written words, initials, a title, or any abbreviation in order to make another person believe that he/she is licensed under this Act or that he/she is qualified to act as a surveyor; or

b) not a member of the Association but uses or causes to be used or permits to be used any written words, initials, a title, or any abbreviation in order to make another person believe that he/she is a member of the Association,

shall be guilty of an offense and liable on conviction to a fine or imprisonment as set out in the Regulations to this Act.

#### **Section 50**

Any person who:

a) willfully makes or causes to be made any entry in the Register which is to his/her knowledge false;

b) willfully has or attempts to have him/herself or another person registered as a surveyor by either oral or written declaration which is to his/her knowledge false,

shall be guilty of an offense and liable on conviction to a fine or imprisonment as set out in the Regulations to this Act.

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## **Section 51**

Any person who, without the authority of the Chief Surveyor or a person to whom he/she has delegated authority to act, willfully obliterates, removes or damages any trigonometrical station, survey beacon, mark, pole, or boundary monument which is affixed, set up or placed for the purpose of a public survey made in accordance with the provisions of this Act shall be guilty of an offense and liable on conviction to a fine or imprisonment as set out in the Regulations to this Act and in addition may be ordered by the court to pay the cost of repairing or replacing the damaged, obliterated or removed feature.

## **PART VIII MISCELLANEOUS PROVISIONS**

### **Section 52**

Before any aerial survey of any immovable property is made, the person responsible for making such a survey, at least one month before commencing any aerial photography in connection with the survey, shall give notice to the Chief Surveyor in writing of the intention to carry out the aerial survey in question. The Chief Surveyor may waive the requirement of advance notice in cases where in his opinion it would cause a hardship to provide notice thirty days in advance of the proposed survey. A flight diagram or plan relating to the survey shall be supplied to the Chief Surveyor.

### **Section 53**

At the conclusion of the aerial survey, the surveyor who has carried out the survey, if requested by the Chief Surveyor, must provide the Chief Surveyor with one copy of every photograph taken, together with a copy of any plan and shall lend to the Chief Surveyor any film or slides which have been prepared for the purpose of carrying out the survey in question. The Chief Surveyor shall pay all expenses incurred in connection with the provisions of this section.

### **Section 54**

Any person who fails to comply with the provisions of Section 52 shall be guilty of an offense and liable on conviction to a fine or imprisonment as set out in the Regulations to this Act.

### **Section 55**

No person may use terrestrial photography for the purpose of any land survey without the written permission of the Chief Surveyor. A request for permission to use terrestrial photographs for the purpose of any survey of immovable property must be accompanied by a plan showing clearly the extent to which it is intended to use such photography. Where the Chief Surveyor decides to grant permission to use terrestrial photography for the purpose of any survey of immovable property, the permission may be granted with the terms and conditions as the Chief Surveyor thinks fit.

Any person who fails to comply with the provisions of Section 52 shall be guilty of an offense and liable on conviction to a fine or imprisonment as set out in the Regulations to this Act.

### **Section 56**

For purposes of carrying out a survey for public purposes the Chief Surveyor and any surveyor authorized in writing by the Chief Surveyor to carry out the survey, after giving three days notice of the intention to the owner or occupier may

- a) enter upon any immovable property not built over, whether public or private, accompanied by the assistants required; and
- b) fix or set on the immovable property survey monuments, pegs, marks, poles and beacons and alter, repair or remove any monument, peg, mark, pole or beacon, in connection with the conduct or inspection of the survey.

No permanent survey monuments, pegs, marks, poles or beacons shall be affixed to or placed in any yard or garden attached to any dwelling house without the written permission of the owner or occupier.

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### **Section 57**

Any person who willfully molests, prevents or obstructs any person in the lawful exercise of carrying out a survey provided for by the provisions of section 56 shall be guilty of an offense and liable on conviction to a fine or imprisonment as set out in the Regulations to this Act.

### **Section 58**

The owner of any immovable property upon which any permanent survey beacon or mark is affixed, and the owner of crops or trees cut or damaged in the exercise of any power conferred by section 56 shall be entitled to be paid adequate compensation by the Chief Surveyor in the case of a survey for public purposes, or the surveyor concerned in the case of any other survey, and any question arising as to the amount of such compensation when the owner, on one side, and the Chief Surveyor or surveyor, on the other, have failed to reach an agreement shall, in default of agreement shall be referred to the appropriate tribunal or court in the district where the immovable property is located.

### **Section 59**

Any person who feels aggrieved by the fact (a) that his/her application for registration as a surveyor has been refused; (b) that a disciplinary committee made an order in relation to a complaint made by or against the surveyor; or (c) that the Board, in the exercise of their function, has wrongly removed his/her name from the Register or suspended his/her registration, may appeal the decision in writing to the proper tribunal or court within fourteen days of the time the adverse decision is received.

### **Section 60**

The Minister after consultation with the Board may make Regulations for any of the following purposes:

- a) prescribing the form and method of keeping the Register;
- b) prescribing the forms for applications, licenses, certificates and other documents required for purposes of this Act;
- c) prescribing the fees payable for examination and registration and licensing as well as for alterations and additions to the Register and for the issuance and renewal of licenses and any necessary copies;
- d) prescribing the subject matter of examinations to be conducted by the Board, the standards required of successful candidates and the conditions governing the grant of exemptions from any of the requirements of the regulations referring to examinations;
- e) prescribing the conditions governing the employment of and training by surveyors of assistants and apprentices;
- f) regulating the conduct of surveys, including provision for ensuring the accuracy of plans and surveys and for the amendment of survey plans and diagrams in accordance with requisitions made in the name of the Chief Surveyor and for the manner in which plans and diagrams are held and stored;
- g) prescribing the manner in which surveys shall be performed and the manner and form in which the records of such surveys shall be prepared and furnished to the Chief Surveyor;
- h) prescribing the diagrams and general plans required in respect of the survey of any immovable property, the manner of preparing such diagrams and general plans, the information to be recorded on the plans and diagrams and the number of diagrams and general plans to be supplied to the Chief Surveyor;
- i) prescribing the fees for the examination and checking of plans by the Chief Surveyor and the supply of copies of plans and other recorded by the Chief Surveyor;
- j) prescribing the minimum charge for the survey of any immovable property and the manner in which and the person by whom such fees shall be paid and the person who shall bear the cost of such payment;
- k) regulating the proceedings of the Board and any other matters necessary for the efficient discharge of its functions under this Act;
- l) prescribing penalties for offenses that contravene the Act and the Regulations; and
- m) preparing regulations for any other subject that is deemed necessary by the Minister or the Board.

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### **3. BUYING AND SELLING OF IMMOVABLE PROPERTY**

#### **3.1 INTRODUCTION**

The original act set up to transfer Immovable Property has gone through a number of revisions. This represents the last revision following intensive meetings at the Ministry of Agriculture. There were two schools of thought involved in the preparation of the Draft which preceded this one. First of all, there was the approach that called for an absolute set of priorities to allow the villagers to have a right of first refusal without regard to any other mechanisms of control (like pricing). Secondly, there were those individuals who wanted to have the purchase and sale of immovable property be a pure open market transaction with no conditions or existing priority rights. This Draft tries to take into consideration the issues of the “open market” transaction by attempting to create a compromise. The mechanisms are making an attempt to respect the open market nature of the transactions and at the same time to try to preserve some integrity in the existing village social structure.

The Draft also looks at the concept of family structure and attempts to deal with how immovable property can be sold without creating a major bureaucratic system. This draft provides for a system of reasonable notice to absent family members. The attempt is to allow the land market to operate within the context of a family that is spread out in many geographical locations both inside and outside of Albania.

The following Draft was prepared as the outcome of the final meetings.

#### **3.2 DRAFT BUYING AND SELLING ACT**

**REPUBLIC OF ALBANIA  
PEOPLE'S ASSEMBLY  
LAW  
on  
BUYING AND SELLING OF AGRICULTURAL LAND  
Supporting the Article 16 of Law Nr. 7491,  
dated 29.04.1991, for “Main Constitutional Provisions,”  
with the proposal of the Council of Ministers.**

**PEOPLE'S ASSEMBLY  
OF THE REPUBLIC OF ALBANIA  
DECIDED**

##### **Section 1**

The purpose of this Law is to define the juridical regulation of transferring the ownership rights over the agricultural land through the alienation of such land.

##### **Section 2**

If not otherwise required, the following definitions will be used:

“Transfer” means passing of the ownership right over the agricultural land through a contract of purchase and sale;

“Family Agricultural Land” means Agricultural which taken by the family according to the provisions of the Law Nr. 7501, dated 19.07.1991.

“minimum size parcel” means agricultural land which is registered as one parcel on the Register of Immovable Property;

“Registrar” means the person defined in Law Nr. 7843, dated 13.07.1994, “On Registration of Immovable Property.”

##### **Section 3**

The transfers of agricultural land is not valid if the immovable property which is being alienated is not registered according to the provisions of Law Nr. 7834 in the place in which the property is located.

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#### **Section 4**

When a family/person desires to alienate agricultural land, a request must be presented to the Registrar to change the Kartela of the parcel involved. The request must be made in accordance with relevant provisions of the Civil Code and include:

- a) a notarized contract signed by the head of household or the chosen representative of the family whose land is being alienated; and
- b) a separate notarized statement signed by at least the adult members of the family who, at the time of the contract, live on the family property.

#### **Section 5**

The form of the contract for buying and selling of agricultural land shall be defined by subsidiary acts or regulations.

#### **Section 6**

Reasonable notice of the pendency of a sale shall be given so that members of the family who are not resident with the head of household have a chance to state their position on any intended sale. If such a family member to whom reasonable notice has been made has not responded within fifteen (15) days from the time the notice is made, he/she shall be treated as if he/she knew of the intended sale.

#### **Section 7**

In cases when one of the members of an agricultural family wants to sell his part (or a part of his/her part) of agricultural land this shall be done in accordance with the relevant provisions of the Civil Code.

#### **Section 8**

When the family/person desires to sell the agricultural land, he/she is obliged to make known such intention, in the village where the agricultural land is located. He/she shall provide notice through appropriate means to any potential buyer of the amount of any offer he/she has received or any indication that an offer might be made for a particular sum.

#### **Section 9**

The sale price of the land shall be determined by any relevant market information relating to the sale price of agricultural land in the village where the land to be sold is located or, where there is no stated value in existence at the time of the proposed sale, the value of the land should be estimated in any reasonable manner by looking at land in neighboring villages or land that may be similar in nature.

#### **Section 10**

The land can be sold to any person who makes an offer for the land with the understanding that an individual who is actually resident in the village where the land is located has a priority right to purchase the property. The priority right is in effect if the potential buyer who is resident in the village where the property is located offers up to fifty percent (50%) over the market value of the land as determined by the prior section. If the sale price is more than fifty percent above the declared market price, the property shall be sold to the highest bidder.

#### **Section 11**

The right of the priority class and the price control shall continue to exist until by Notice from the Council of Ministers, they are no longer deemed necessary.

#### **Section 12**

Any potential buyer must give a response to the formal offer made by the seller within ten days from the time the original offer to sell is made. If there is no response within this period by the potential buyer, it shall be treated as a refusal of the offer.

#### **Section 13**

The Registrar shall treat the contract of sale as void and refuse to register the transaction to sell the land when:

- a) the provisions relating to priority right of resident villagers is not followed;

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- b) the entire parcel as registered is not to be sold;
  - c) the provisions of the Land Protection Act are not followed;
  - d) a person who is not entitled to the priority right to buy has purchased the property and received an undeserved profit; and
  - e) any other provision of this Act or any other relevant law is violated.

#### **Section 14**

Any fees applicable for the registration of the transaction of the sale of land must be paid in accordance with the provisions set out in Law Nr. 7843, Dated 16.07.94 "On Registration of Immovable Property".

#### **Section 15**

The Council of Ministers shall prepare the relevant subsidiary acts to support this Law.

#### **Section 16**

The second paragraph of Law Nr. 7501, dated 19.07.1992 "On Land" and any provision of any other Law which is in conflict with this Law is repealed.

#### **Section 17**

This law comes into force on \_\_\_\_\_.

**Chairman of the People's Assembly**  
**Pjeter Arbneri**

## **4. QUESTION OF REGISTERING *TRUALL* LAND INSIDE THE YELLOW LINE.**

### **4.1 INTRODUCTION**

The question arises how to register land that is inside the yellow line where the size of the parcel exceeds the normal area allotted for *truall* (a building and its surrounding space). There was a formula for the allocation of *truall* in Section 10 of Decree No. 5747 of 1978. Unfortunately, the Decree has been repealed and is therefore no longer in force. The Decree sets out the area specified as *truall* in different amounts in the different locales:

- 1) 150 m<sup>2</sup> for Tirana;
- 2) 200 m<sup>2</sup> for villages on level ground;
- 3) 250 m<sup>2</sup> for low mountain villages; and
- 4) 400 m<sup>2</sup> for high mountain villages.

In distributing the land it was felt that the area designated in the 1978 Decree should be utilized. Thus, a new piece of legislation must be passed which would specify the areas allowed. However, many of the parcels that have been distributed, which are agricultural land at present, but will be utilized as residential or building lots in the future, have an area of significantly more than the area that is allotted under the Decree from 1978.

A further problem has arisen: as the Distribution Commissions knew that there was a potential problem in the manner in which the parcels were designated for distribution. Thus, in some places the distribution was not made. In others the *truall* was given in ownership utilizing the area as set out in the 1978 Decree and the balance of the parcel was given as State property, either as public land or in use. Thus, one parcel may have two forms of tenure. These parcels have not been registered, but are waiting for a solution to the problem.

It is unclear how many parcels are affected by this situation. An attempt was made to look at the database of the parcels that were already reviewed in the pilot Districts, but there was no space on the Kartela to insert two separate forms of tenure. This means that all we know at this point is that the problem exists. How many parcels are

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affected by the situation is unclear. There should be a clarification of this point. It has been put on the agenda of things to be completed.

However, since the problem was well documented during my March 1995 visit I initiated a discussion with a number of persons on this problem. The solution that I felt made the most sense was independently recommended by others. The suggestion is to subdivide the large parcels by leaving the *truall*, as it is distributed in ownership on the parcel, in a position so that the parcel can be divided into one or more subsidiary parcels (depending on the area of the parcel as it was distributed). The new parcels can either be sold on the market, auctioned off at public auction or distributed by some other method as ownership property. It is essential that some form of sale take place as the person to whom the property was distributed in the first instance is in a position to receive a windfall from this property upon which residential housing is ultimately to be built.

There is resistance to subdividing these over-sized parcels. It was felt that the project staff has enough to take care of without requiring them to go back over the distribution of land carried out by the Commissions. To have these parcels conform to the standard of the 1978 Decree could potentially require new surveying, mapping and ultimately adjudication for purposes of first registration. This could be time consuming and set the project back in terms of its scheduling.

The issue was not resolved when I left. There were two differing positions. It was therefore proposed that an analysis be carried out in the field to try to make an accurate assessment of how many parcels are involved in this situation. It need not be emphasized that there are potentially not very many parcels involved countrywide. If the issue is resolved at this point, before too many districts are registered, it is possible to deal with this problem as the field teams move forward. In that light, it is suggested that an analysis be carried out to determine how extensive this problem is. Once the determination is made, a formal recommendation should be made.

In the meantime, the beginning of a draft has been prepared in collaboration with the PMU. The discussion should continue and a final decision concerning the ultimate disposition of these parcels should be taken care of. The draft Act follows.

## **4.2 DRAFT OWNERSHIP OF *TRUALL* ACT**

**REPUBLIC OF ALBANIA**

**PEOPLE'S ASSEMBLY**

**LAW**

**on**

**PASSING INTO OWNERSHIP OF SITES (*TRUALL*)**

**WHICH ARE OCCUPIED WITH PERMISSION FOR DWELLING  
HOUSES IN THE VILLAGE WITHIN THE YELLOW LINE**

**On the basis of Article 16 of Law Nr., 7491,**

**dated 29.04.1991, "On the Fundamental Constitutional Provisions,"**

**with the proposal of the Council of Ministers.**

**PEOPLE'S ASSEMBLY**

**OF THE REPUBLIC OF ALBANIA**

**DECIDED:**

### **Section 1**

The site (*truall*) of the dwelling-house within the yellow line in the village, constructed according to the criteria of the decree no. 5747, dated 29.06.1978 "On compilation, approval and implementation of the regulating plans of the villages and towns", is given in ownership to the physical persons.

The amount of the site (*truall*) which is given in ownership, shall be based on the criterion defined in article 10 of the decree no. 5747, dated 29.06.1978.

### **Section 2**

#### **Variation 1**

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The extra areas that remain from this passing of land in ownership, which are not taken into consideration by the commission of distributing the agricultural land in the village and which are being used by the physical persons, are given in ownership of the local government under the jurisdiction of which this area is.

If this site (*truall*) is needed for construction by the person who has it in use, it passes in his ownership by paying according to the defined coefficient, according to the criteria of the Council of Ministers.

### **Variation 2**

The extra areas that remain from this passing of land in ownership, are given in ownership to the local government, actually will not continue to be used by the physical persons, and according to the needs for construction and on the basis of the regulating plans, should be given by the local government as constructing sites (*truall*).

This site (*truall*) is needed for construction by the person who has it in use, it passes on his ownership by paying according to the defined coefficient, according to the criteria of the Council of Ministers.

### **Section 3**

The passing into ownership of the site (*truall*) is made according to the value (or free of charge) defined according to the criteria set out by the Council of Ministers.

### **Section 4**

There shall be subsidiary legislation and Regulations prepared as necessary to implement this Act.

### **Section 5**

This law comes into effect immediately upon passage.

## **5. CONVERSION OF “IN USE” LANDS TO OWNERSHIP.**

### **5.1 INTRODUCTION**

Although not exactly part of the Terms of Reference, a special request was made by the Minister of Agriculture and Food, Mr. Hassan Halili, that a decision be made to convert to ownership as much of the “in use” land in Albania as possible. The Minister indicated that the Government wanted a simple piece of legislation that first noted which categories of “in use” would not be converted and wanted a statement that all other land held in use would from a certain date forward be held in ownership. He did not elaborate on any of the procedures, et al. that needed to be considered. For example, it is important to determine whether or not the conversion will be made free of charge. Second it is important to determine whether the immovable property that is not converted to ownership will remain as “In use” lands with a specific contract or would be converted to leasehold (under the provisions of the Civil Code) with a separate contract which spells out the rights and obligations. It should also consider whether a standard agricultural contract of lease or in use should be created.

As part of this Report I have included the draft of a simple law that takes into consideration the issue. The portion of the Draft which I was able to complete is as follows.

### **5.2 DRAFT CONVERSION OF IN USE TO OWNERSHIP ACT**

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**REPUBLIC OF ALBANIA**  
**PEOPLE'S ASSEMBLY**  
**LAW**  
**on**  
**CONVERSION OF IN USE TO OWNERSHIP PROPERTY**  
**Supporting the Article 16 of Law Nr., 7491,**  
**dated 29.04.1991, for "Main Constitutional Provisions,"**  
**with the proposal of the Council of Ministers.**

**PEOPLE'S ASSEMBLY**  
**OF THE REPUBLIC OF ALBANIA**  
**DECIDED:**

**Section 1**

The purpose of this Law is to define the juridical regulation of converting the in use rights over the agricultural land to private ownership interests.

**Section 2**

Any immovable property which is held by:

- a) a person or is subject to a claim of a right to possession by a person who makes the claim on the basis of
  - i) illegal settlement;
  - ii) purchase of the land from a person who does not possess a legal interest;
  - iii) informal permission to settle on property; or
  - iv) or other illegality,

shall remain as in use land and the State, in accordance with the Regulations to this Act shall determine how this property shall be treated. [Possible treatment would be to review cases individually and make the property available for sale to the possessor with a priority interest or to make the property available at a public auction]

b) any person within the yellow line that is in use shall remain in use until a public auction is held to sell the property which will then be registered as property in ownership.

c) any person in use who works in a state enterprise away from their place of normal residence shall continue to receive property up to four dunams in use for the duration of their service for the state in the place where they received the property in question. The relationship with the state shall be formalized in accordance with the provisions of this Act.

**Section 3**

Any property which is converted to ownership shall be registered in accordance with the provisions of the Immovable Property Registration Act.

**Section 4**

Any property not converted to ownership shall be registered as

**Variation 1**

State land categorized as "in use" and an agreement shall be prepared setting out the terms of the in use relationship with the state. The property shall be registered as state property.

**Variation 2**

State property with a subsidiary leasehold interest and a contract of lease shall be issued for each property so designated in accordance with the provisions of the Civil Code.

**Variation 3**

State property and shall be governed by the provisions of this law (which defines the standards of the in use tenure category).

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## Section 5

This law comes into force on \_\_\_\_\_.

**CHAIRMAN OF THE PEOPLE'S ASSEMBLY  
PJETER ARBNORI**

## 6. SOURCES OF THE CODE

In order to properly utilize the Civil Code of 1994, it is imperative that a Concordance be prepared. While in Tirana, I attempted to see a number of persons concerning the sources of the Code. The meetings at the Ministry of Justice on this issue with the Chief of the Codification Division were not fruitful. However, with the possibility of a new relationship emerging with the Ministry of Justice, it is possible that there will be more possibilities of progress on this issues.

It had been understood that the Dutch Civil Code was freely utilized as a source. This was because of its status as the “newest” Code of Europe. There were references made specifically to the law of “obligations” and “property” which I had hoped to follow-up on.

The preparation of a Concordance is an essential aid to help in the preparation of materials that will be necessary for the Registrars and others who will work with them. It is fundamental that an accepted interpretation of the source Code be provided as a guideline for the future development of the Albanian legal interpretation. The Concordance will also help with the development of education at the Faculties of Law.

## 7. PROPOSED SEMINAR ON LAND REGISTRATION BY THE COUNCIL OF EUROPE

During my visit the Head of the Codification Division of the Ministry of Justice asked the Project's assistance in preparing for a Seminar on Property Registration. After some discussion we determined that the proposal, as submitted by the Council of Europe, was not acceptable. A suggested letter and a revised schedule was prepared for the PMU's consideration. The General Manager followed up on this matter by communicating the PMU's feeling to the Minister of Agriculture who was in turn to communicate with the Minister of Justice.

The principal problem with the Council of Europe's proposed Seminar was that it made no recognition of the activities that took place in Albania relating to property registration over the past two and a half years. There was an assumption that Albania has to be shown the different models used for Registration and they could then select the proper option for their country.

### 7.1 COMPOSED LETTER

March 27, 1995

H.E. Hektor Frasheri  
Minister of Justice  
Ministry of Justice  
Tirana

Dear Sir:

The Ministry of Agriculture and Food has received the Proposal for a Seminar on the Registration of Immovable Property to take place in May 1995. The proposal as sent is not acceptable to us. It does not take into consideration the fact that Albania has already passed and put into effect an Immovable Property Registration Act. Secondly, the Council is proposing to bring a series of Experts that they will designate to discuss issues which have already been dealt with in Albania. We do not need this kind of discussion from outside experts.

If we are going to support this Seminar, we feel it is important for us to designate who the experts will be (for the most part from Albania) and to set out the outline of how the discussions should be structured. We feel that if

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there is going to be a Seminar, it should be done to benefit the local people who need to have more information at this time about the new registration system that has already been adopted in Albania.

Yours sincerely,

Hassan Halili  
Minister of Agriculture & Food

## **7.2 ADDENDUM TO THE LETTER: PROPOSAL FOR THE SEMINAR**

### **SEMINAR ON THE REGISTRATION OF IMMOVABLE PROPERTY**

Albania

Draft Programme

Monday, May 23, 1995

8:30 Registration

9:00 Opening of the Seminar by: Minister of Justice or Minister of Agriculture

9:15 Introduction to the Seminar of the programme of legal co-operation of the Council of Europe by: Anita van de Kar, Director of Legal Affairs of the Council of Europe

9:25 Introduction to the Seminar of the programme of co-operation relating to the development of an Immovable Property Registration System and an active Land Market by: Ahmet Jazoj, General Manager, PMU

9:35 System, situation and activities that led up to the current reform by: an expert chosen by the PMU and the Ministry of Agriculture [unreadable on Fax]

10:00 Discussion

10:25 Coffee break

10:35 The new Albanian Immovable Property Registration Act by: an expert chosen by the PMU and the Ministry of Agriculture

11:00 Discussion

11:25 Land Information in Albania: the development of the system and the assessment of progress by: an expert chosen by the PMU and the Ministry of Agriculture

11:45 Discussion

12:10 Lunch

14:00 The functioning of the Registry: including the role of the Registrar, other persons including the Notary and how to deal with the adjudication of disputes at first registration by: an expert chosen by the PMU and the Ministry of Agriculture

14:25 Discussion

14:45 Coffee Break

14:55 Session on mapping and surveying should be included (possibly here) by: an expert chosen by the PMU and the Ministry of Agriculture [unreadable on original communication]

15:15 Discussion

15:35 The development of Databases and the use of Data: the ease of access to data and the control of the availability of the data by: an expert chosen by the PMU and the Ministry of Agriculture

15:55 Discussion

16:15 [Unreadable on the original communication] by: an expert chosen by the PMU and the Ministry of Agriculture

16:35 Discussion

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16:55 Discussion and review of the presentations, Chairperson: Ahmet Jazoj

17:15 Official Closure of the Seminar

Appropriate persons should be invited from the following places:

- 1) PMU
- 2) Ministry of Agriculture
- 3) Ministry of Construction
- 4) Ministry of Finance
- 5) Ministry of Justice
- 6) Cadastral Offices
- 7) Hipotekas
- 8) Co-ordinators
- 9) Mapping Section of the Institut Tokavi
- 10) Military Topographic Institute
- 11) Urbanistik Institute
- 12) Judges from various courts (Magistrates and Appeal court and Court of Cassation)

## **8. PROGRAM FOR THE FUTURE**

### **8.1 MEMORANDUM TO RACHEL WHEELER**

The following Memorandum which is meant to set up the program of work for the foreseeable future was prepared for Rachel Wheeler as she spent her time with me during the March visit. Although I do not expect to utilize all of Rachel's time in the future, she has been involved in a number of project activities, and I do hope her assistance will be available to set up the necessary field research that will be important to develop the policies for some of the future work.

The Memo of March 30, 1995, stated the following:

"I hope the following can be followed up after my departure and before my return (which is at present not clear, although Ahmet has asked me to please return in May).

"There are basically four items that need to be dealt with:

"1. *Truall* inside the yellow line and the double tenure distribution. Please try to get some understanding of how extensive this problem is. As you know the database was inconclusive in making clear how significant a problem this is. I think a careful selection of a sampling of districts (new and old) may provide some insight into how this might be dealt with without providing any disruption on Project activities. The recommendation from government sources, including within the PMU appears to keep this land as "state" (mostly in use) until it can be sold in ownership through some form of public auction.

"2. Tribunal Act justification.

a) please review the statistics of the Ministry of Justice to see if they reveal anything about land disputes. If they do, then analyze them; and

b) try to organize things so you can visit District Courts. There you should review any paper work they have on land cases. The analysis should include the type of case, when it was instituted, how long it has taken to get to the point they have reached in their deliberations on the case, how bitter the dispute is, etc. If possible please try to observe actual court activities on any land disputes you can find. You should do a profile on some cases that appear

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to be typical. Finally, if you are able try to follow some typical cases back to the source by interviewing the disputants.

c) Try to speak with persons who have land disputes by presenting the alternative of the Tribunal (a copy of the draft act should be available at the PMU - if not let me know and I will get it to you as soon as possible - through our E-Mail connection) to the court. We want to see if we can identify any popular sentiment to keep disputes out of the court and have them dealt with quickly.

“3. In following up on the attempt to identify the sources of the Civil Code see the European Union person (I think she is called Lillyetta) to get a list of people who might have been involved. I will then try to follow-up to see what they may tell us. Many will be European Law Professor. You will then be able to try to follow it up here through Petrit at the Court of Cassation and other sources that might be identified - like to see what the CEELI persons knows, what people at the Faculty of Law might know, etc.

“4. Identification of addition in use categories that go beyond those presented to us the other day. This should be the primary goal.

“This has been fun. I hope we will be able to continue fruitfully. As I noted my E-Mail address is nsinger@ualvm.ua.edu which is the most secure. I have a second address which I think is nsinger@anthro.as.ua.edu - the first address forwards everything to the second so use the first one and see how my responses read. They will give you an accurate rendition of the second address.

“My schedule for the immediate future:

“1. Home on Monday the 3rd April;

“2. Leaving for NY on Friday AM the 7th; returning Monday night the 10th

“3. Remaining home until the 26th of April, although I will have two overseas visitors who will take up some time - the 12h-15th of April and 14th-22nd April.

“4. From 26th April through May 6 and from May 7-14, I will be away for two weeks without an E-Mail forwarding address. However, I will always be able to use Telnet for purposes of reading messages and for most of the time I will be away, Anna will be in touch with me and will be able to forward messages back to the sender.”