REPORT

OF A

CONSULTANCY

IN

ALBANIA

JULY 4 – JULY 29, 2001

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This is the Report of the visit to Albania from July 4 through July 29, 2001. The Terms of Reference follow:

Background: The objective of this assignment is to advise PMU and IPRS on the complex issues that are facing them at this stage. The Consultant will be called upon to summarize and analyze the work of the PMU and IPRS counterparts and produce a recommended plan of legal work for later in the year and for the year 2002.

Scope of Work: Specifically the Consultant will focus on the following issues:

A) **Land Conflict Mediation Law**. While the court study is going slowly, and the trend seems to be that the number of court cases involving land conflicts is declining, there may not be a need for a special law for channeling land conflicts into mediation and away from courts. The Consultant will review the status of the Land Conflict Mediation Study and make recommendations as to whether or not a special law is required and/or what alternative methods of mediation can be implemented.

B) **Family land issues**. Fitim Hoxhati was contracted by the PMU and did a major study of agricultural family land, and has developed some proposals for fixing the Civil Code. The Consultant will review those proposals so as to finalize the process.

C) **Informal settlements**. Over 400,000 new migrants have moved into and around Tirana, and have built a lot, most of it on land they cannot prove ownership, and without building permits. There is a proposal for legalizing informally built buildings, done by a Ministry of Public Works team, and a proposal for legalizing informal land claims, which PADCO people are developing. The Consultant will review the current situation and assess how the PMU/IPRS can contribute to those efforts without lots of approvals from people already working. [Ahmet and Kathrine are doing a study of three areas of Kamza, trying to identify main types of problematic tenures in such informal settlements, and need help with formulating how the different types of irregular situations could be regularized.]

D) **Ex-owner restitution and/or compensation**. There are at least three proposals for legislation, which seems to be getting international organization attention, to "fix" the Restitution/Compensation law and regulations. The ex-owner proposals seem to be on the verge of granting ex-owner heirs' claims almost automatically, and thereby generating lots of conflicts between those claiming to be heirs of ex-owners and the present occupants/owners of the buildings and land. The consultant will review the current situation and work with the PMU/IPRS on how or if the law will work and if so what program will affect the success of the law.

E) **Land Administration**. A new law has been passed which enshrines the Consultant's ideas from 1994 for new land administration offices, and authorized the creation of these offices. Little implementation thinking has been done. The Consultant will assess the current situation and make recommendations to further implementation.

F) **Law Faculty**. Work with the Law Faculty to develop specific lectures on property law and consult with the faculty on the possible development of property law courses beyond the existing curriculum.

G) **Location of the IPRS**. There is a draft law in Parliament now from the Ministry of Justice to take over the IPRS, however there are indications that it will not pass. While there is some agreement with the criticism that some registration Offices are not running efficiently. The Consultant will render an opinion as to whether or not the Ministry of Justice could fix this problem and present other alternatives to this issue.

H) **Coordinate initiative with the Chief Registrar**. Work with Chief Registrar to analyze the developments within the current initiative and assist focusing attention to what that all mean for the IPRS

The following report deals with the activities that took place during the month of July, 2001. Although all of the activities were important, the one that has most immediate impact, and on which the most time was spent, was the completion of the First Registration [Section H] and the manner of dealing with properties for which owners do not have all their documents. This is a matter of some urgency in the urban areas.

A. Mediation Centers, the Conflict Resolution Foundation and the Immovable Property Mediation Board Act - During the consultancy, I spent some time with the persons working at the Conflict Resolution Foundation. The first contact was at the round table discussion during which the findings of their research in the Tirana District Court were reviewed. The findings were presented with an eye to seeing whether it made sense to propose mediation as a process. The discussion at the Round Table used the results of the court study to focus on whether mediation could be an alternative process. The conclusion to those who focused on property disputes was that there was some promise in considering the use of the mediation process as an alternative to formal courts. We then scheduled a number of meetings to discuss their project to set up mediation centers throughout Albania and the use of that process to resolve property disputes.

In fact, their research has shown that of the 1,920 cases that went through the Tirana District Court in 1997, 866 [or 45%] involved property issues. However, a very high percentage of the overall cases [30.2%] were *vertitim i faktit* cases which would no longer be considered. One could project that this was true in most of the urban centers throughout Albania. If one eliminated the *vertitim i faktit* cases, the category that spawned the most cases was the refusal to follow through on a contract involving land [breach of a contract to deal in land]. There were also a high number of trespass and partition cases.

The fact of the large number of property cases that have been presented to the court led to the discussion of whether or not there was room to deal with the formal introduction of an institution with jurisdiction to deal with property cases. The Director of the Conflict Resolution Foundation asked if he might see the draft of the Property Mediation Board that had been presented to the PMU some years before. He asked to review the draft to see if there was a manner in which the Mediation Center idea could be extended to accommodate the idea of an immovable property mediation board. This draft is included here as Annex I.

We scheduled a follow-up meeting in which the Director said he was impressed with the ideas in the immovable property mediation board draft law. He saw ways in which mediators could be trained and a variation of the mediation board which was being developed by the Foundation could be developed to deal with disputes over immovable property. The last meeting was held near the end of the consultant's stay and the Director of the Foundation was about to go abroad for a week. He agreed to email a proposal on how we could work together. It has been about a month and there has not yet been a proposal that has been received.

There should be a follow up to this. Since there is activity to introduce the informal legal procedure into Albanian, there is no reason why the immovable property mediation board should not become a specialized institution under the broad umbrella of the Mediation Centers which

are being developed throughout the country. The immovable property mediation board can be both an independent institution and at the same time be part of the system that the Conflict Resolution Foundation is developing. Further contact with the Foundation is necessary. I think it is agreed upon that an alternative process that is both friendlier and speedier than the court is a necessity. It is certainly a positive factor that there has been a reduction in the number of land related cases that have been brought before the court. However, it is not just the number of cases the court must deal with that is important. Property disputes tend to exist over long periods of time. It is the essence of the property dispute which makes it more effectively handled when it is dealt with by a process that aims to actually resolve disputes. The court simply renders a decision but does not endeavor to terminate the conflict with finality. The agreement reached with the Director of the Foundation is indicative of the important role that mediation can play in the resolution of property disputes.

I have included the draft of the immovable property mediation board act, as noted above as Annex I [a draft already in existence in Albanian] which can be referred to Rasim Gjoko, the Director of the Albanian Foundation for Conflict Resolution for further action on the development of alternative methods for the consideration of property cases.

The Immovable Property Mediation Board[1]:

During the July 2001 visit we raised the possibility of submitting a revised Immovable Property Mediation Board Act to the President of the Conflict Resolution Foundation for review. As noted above, he reviewed the draft and liked what he saw. He indicated that there was a compatibility with his activities in trying to develop a series of Mediation Centers throughout Albania. Therefore this is included in order to provide the material with which the immovable property mediation board can be moved forward.

In 1996 the Minister of Agriculture had been in favor of establishing an informal Mediation Board through which land disputes would pass. We had decided, as a matter of strategy, that it would be best at this time to try to provide a stronger justification for the need of the Mediation Board.

In order to create justification for the Mediation Board it was felt it was necessary to assess the kind of activities that were taking place in the District Courts at this time. An analysis in March of 1996 indicated that the courts were in fact beginning to receive large numbers of petitions on

[1] The precise name of this legal institution whether it is to be called a “Immovable Property Tribunal”, Arbitration Committee, Mediation Board, or something else is not considered at this time. The title “Mediation Board” is included here simply to provide a title. Some of the other words to be used in designating various concepts in the Act [like Plaintiff versus Petitioner or Defendant versus Respondent] have not been discussed either and they are presented in bold face. Once the decision is made to go forward with the idea or creating a separate body to deal with land and land-related disputes, many of the decision involving terminology and basic procedures will have to be made. This draft is present at this time as the Lawyers Group considered the principal of creating a body to alleviate the pressure on the court system by hearing land and land-related disputes apart from the “regular” court system. The group of legal consultants to the project known as the “Lawyers Group” agreed unanimously that there should be such an institution developed. Therefore, I have included a basic draft in the Report, along with a set of Forms for administering the system to be considered as a prelude to the next step in which detailed discussion should take place concerning the operation of such a body

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 land cases were going to impose a serious burden on the courts - thus justifying the Mediation Board. It was clear by January of 2000 that the court were seriously burdened with land and land-related disputes. 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. This was never done as the statistics were either not made available to use or accurate statistical information of the type that we would need was not available.

Therefore in 1996, 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 courts 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 cooperation. A meeting was set up and indeed the Deputy Minister was most cooperative. He approved our proposal on the spot and we anticipated doing the background assessment preparing for some field work on my next visit. (See Memorandum to Rachel Wheeler in Part 8 of the Report of March 1996).

The Deputy Minister of Justice, at that time, asked to see a draft of the Immovable Property Mediation Board Act. No further action was taken at that time. However, as noted above it seemed appropriate to conduct a study of court activities at this time since there was now a clearer picture of the range and number of disputes that have arisen concerning land and land-related disputes. There are many disputes; the types of disputes that the courts must face, though numerous, are repetitive and it was felt that it would be appropriate to review the idea of whether or not a special institution should be created to deal with them. In 1998 a group of three senior lawyers from Tirana, known in the Project as "The Lawyers Group"[2] reacted positively to the idea after reading through the 1996 Draft. It is therefore presented in this Report to get a wider reading. There are also twenty-four Forms attached to the Draft Act [although not presented herein] to indicate the actions that this institution might take.

B. Family Land Issues. I was given a copy of Fitim Haxhati's study on agricultural family land. I attempted to read the study, but found the language of the translation was so dense and unreadable, that the only way for me to understand the contents of the study would be to visit with him and discuss the study. I had asked Petrit Hassanali to arrange for a meeting with Mr. Haxhati at the Ministry of Justice, but there was never any response, even after I had reminded Mr. Petrit a number of times. Thus, the only thing I can report on this study is that I attempted to read it and was unable to. I asked that it be retranslated and I was told that the Albanian is just as difficult to deal with as the English translation is. Therefore, this became a low priority item on

[2] The three lawyers in the "Lawyers Group" were two former members of the Constitutional Court and a senior member of the State Prosecutorial Staff.

my list of activities. I waited to be told that there was to be a meeting with Mr. Haxhati, but it never came about. Again, I can only report that an attempt to read this research paper proved impossible and there is therefore nothing to report.

It is interesting to note, that I was given a review of the study to look over. In the review Mr. Berdhyl Qilimi, the Director of Lands in the Ministry of Agriculture and Food notes, *inter alia*:

> "Finally, the simple and clear language, the order of the problems with a certain logic, and keeping the same logic in all the chapters of his study make the problem understandable for each specialist or the administrator or scientific researcher, despite the fact if he/she is a lawyer or not"

Inasmuch as this reader of the original Albanian text was unable to make sense out of what was written, it is probable that the translation was unclear. If it is desirable to have an additional person review the study, it is suggested that the translation should be looked at and perhaps redone.[3]

C. Informal Settlements – In order to understand the nature of informal [illegal] settlements of land, I read the Jazoj & Kelm study of the informal settlement at Kamza; I met with the staff at Co-plan [and had a follow-up meeting with the Director Besnik Aliaj] and I met twice at the Ministry of Public Works with the Director of the World Bank sponsored Urban Land Management Project [Sokol].

The Kamza study is very important. This is especially true if the government is going to regularize the informal settlements, provide them with infrastructure [roads, water, and electricity] and ultimately give them Kartela[s] recognizing their ownership. To do this, the first stage is to find out who is living in the area and provide maps of the area. The problem with providing infrastructure and legality to informal settlements is that you first have to stop to the influx of new settlers and the increase in the number of informal settlements that result.

The Kamza study has produced maps of the area. This is a very important part of the work that must be done in advance of any regularizing activity. The maps will allow many of the decisions relating to infrastructure, etc. to be made. They will also allow the regularizing agency to have an understanding of the dimensions of the settled area which will assist in issuing kartelas to the informal settler.

Two aspects of the World Bank/PMU activities in the informal settlement areas became evident as we spoke about the activities. First, it was unclear how the government was going to put a stop to the increasing [at a decreasing rate] number of informal settlements. Our suggestion was to

[3] However, I would like to mention that I did speak to the person I was told translated the study from Albanian to English and she indicated that the Albanian was particularly difficult; it was very difficult to make sense out of it and the translation, therefore, captures the essence of what the translator was able to glean from a particularly difficult Albanian text.

imposing a date after which there will be no settlements allowed, or create some other procedure to fix the illegal settlements in time, so that any informal settlement after the chosen date is clearly illegal.

Although the Government of Albania has never wanted to discuss the regularization of the informal settlements, there has been some implicit acceptance that legalization of the illegal settlement must take place. For the first time in the election of 2001 politicians were talking directly about the eventual legalization. At the same time the World Bank loan for the "Urban Land Management Project" was being negotiated. The project deals specifically with the lack of infrastructure in areas of both legal and informal settlement and comes as close to recognizing that there is about to be legalization of the informal settlements as one can without stating it in direct language. This is very important as it impacts upon the Albanian Land Market Project, its Action Plan and the manner in which first registration should be carried out.

The World Bank project document states the following important language:

> "Most of the new households have been built illegally, and although they are of a reasonable quality, they are located in areas with no infrastructure. The amount of investment in informal housing construction is currently evaluated at about US$40 million a year. The market value of this yearly informal housing production is at least three times this amount. While housing construction and the development of residential floor space has grown at about the same pace as demographic growth, land development and the provision of primary infrastructure has badly lagged behind. As a result, in 1997 about 235,000 people or 45% of Tirana's population were living in neighborhoods with grossly inadequate infrastructure, representing a gross area of about 1,200 hectares or a bout 57% of the total built up area of greater Tirana. Thus, almost half of the residents typically tap into groundwater sources or into existing water mains, illegally connect to electricity networks, discharge waste water into the neighborhood, and dump domestic refuse into nearby streams of irrigation canals. The environmental risks of this behavior show in the recent high incidence of gastroenteric diseases, while the massive losses of water and electricity contribute to unreliable supplies and extremely low cost recovery…
>
> Because of the seriousness of infrastructure deficiencies, the Government puts a high priority on (a) the development of primary and secondary infrastructure where there is currently no possible private substitute for Government investment, and (b) the stimulation of household investment in tertiary infrastructure and housing. Other urban objectives, such as regularizing tenure through formal cadastres and maintaining tight control over the quality and shape of urban development, should be pursued simultaneously but with lower priority than the development of infrastructure. If the pursuit of these secondary objectives becomes the major focus of an urban policy it may distract financial and human resources from the main objective and, by the year 2006, could result in a city where 65% of the population (about half a million people) would have no access to essential infrastructure.

> The secondary objectives (providing formal tenure) should be pursued only in limited areas where the impact would be maximized without having too many government resources. However, the Government should take the necessary steps to quickly provide an easy way to obtain temporary tenure to all informal urban settlers. Through the payment of a land development fee, this temporary tenure would register the claims of all informal households on an area of land. The availability of a temporary tenure document would decrease transaction risks and raise the market value of household investments in housing construction. It would thus be an incentive to increase private investments in housing and tertiary infrastructure….
>
> The main stakeholders in the proposed project (a) the Government, (b) participating local governments, (c) communities, and (d) utility companies. Each has a role to play….
>
> The Municipality of Tirana and the District of Tirana have been selected as the participating local governments. Other municipalities can also participate in the project with the agreement of the Borrower and the Association. These local governments will be responsible for (i) identifying project sites in line with the established eligibility criteria; (ii) interacting with participating communities; (iii) preparing the urban concept plan and partnership agreement; (iv) preparing designs for infrastructure networks and supervising secondary and tertiary network construction; (v) monitoring project progress and essential developments in the project area (such as registration of temporary tenure rights, monitoring land prices and densities, economic, social and demographic changes); (vi) providing essential information to the Ministry of Public Works and Transport for reporting purposes; and (vii) preparing and implementing city regulations. A project management team (PMT) will be established in each participating municipality or district to work closely with the PCU, the NGOs and the community associations."

The plan for this Urban Land Management Project cannot state any more clearly that it is going to ultimately register the informal settlers. However, before they will be registered the infrastructure should be introduced and the individuals should make a monetary contribution toward the provision of the infrastructure. All of this can be recorded. For their participation they will be rewarded by getting the "temporary tenure rights".

These tenure rights may be captured on a kartela by signifying that these persons are "possessors on government land". Under no conditions should they be given any special status, but they can be entered on a kartela in the same manner as would be lessees on a piece of rented land [Section D]. Unfortunately, there is a recommendation that these settlers be issued a "provisional kartela" using a "Section F" to record the interest. This should not be done. First of all, there is no reason to create additional pieces of paper, like a "provisional Kartela". Every mappable area of land should be included on a master index map. The reference number from the index map will tell you which kartela has been issued for the parcel. Whether it is a regular owner parcel or it falls

into a special category is immaterial. The status of the parcel in question can be adequately recorded on the regular kartela for that parcel of land. That should also be done for the land in the areas of informal settlement. There is no reason to issue a kartela which has a different designation – like "provisional" rather than "regular" and there is certainly no reason to issue a kartela that has different or additional sections. There should be one form of kartela and a reading of that document should be able to provide all the information that is relevant. If there is a regularization process going on, the actual owner of the land should be recorded in the kartela and the informal settler should be recorded on that kartela as a person who is in possession, in the same manner as a lessee might be [Section D of the kartela] – even if the person is not a lessee. His status should be explained in a note. I would expect that for record-keeping purposes that an Index of Informal Settlements would exist with a reference to the kartela and to the UPRN on the index map.

Until the formal regularization takes place, the recognition of informal possession can be accepted as long as the State is registered as the owner of the land. This system outlined by the World Bank Project should allow informal settlers to make the rest of their investment [in infrastructure] and be rewarded by gaining the legal status that they need in order to trade in their land legally.

The Kamza study with its social facts – who the informal settlers are, what their history is - and the provisions of maps which will help the Ministry of Public Works and Transport engineers and others do the planning for roads and sewer and water lines is crucial. The Co-Plan workers understand the nature of the Urban Land Management Project and are working alongside the PMU researchers to move this project into the next stage. With the incentive for the informal settlers to gain a form of "tenure rights" the registration process can move forward in an orderly process. It is not going to happen by itself. A high level of cooperation is necessary. **It is hoped that once the municipalities choose to join in this Urban Land Management Project, that the PMU's one plus two (investigating) teams will join in this activity** and help set the stage for the provision of the temporary tenure rights that will ultimately lead to formal registration. One warning is necessary. Under no circumstances should the registering of informal settlers be made which changes the nature of the administrative system which is already in place. In other words, if there is going to be a recognition of the "temporary tenure rights", these rights should be called temporary and they should be recorded in a manner which is compatible with the existing Kartela, i.e. in the section of the kartela which recognizes possession of a non-owner.

At the end of the consultancy a meeting was held with the Minister of Public Works and Transport. A discussion took place about the draft law "On Legalization of Illegal Constructions" and it was determined that the intent of this draft law was to legalize the buildings that have been constructed on land where there is no question as to ownership. In other words, the law that is being proposed will not impact upon the areas where the informal settlements occur. For the time being, it is important to deal with first questions first. Once the Urban Land Management Project is in full swing and the NGOs and other participants are able to work effectively in the communities with the informal settlement, there will be plenty of time to tackle the legal issues which impact on the full regularization of the land and buildings in the areas of informal settlement.

D. Ex-Owner Restitution and/or Compensation. A meeting was held with the head of the Restitution Commission. It amounted to a review of the situation, Nothing concrete was discussed for the future nor were any specific activities requested. My records do not indicate I was given any drafts of a law or amendments to any existing laws. In fact, it was not surprising that nothing specific resulted from the meeting. A number of years ago, the Consultant worked with persons in the Ministry of Finance/Office of Restitution on a program involving the issuance of vouchers to cover the value of claimed property by ex-owners. In an email message dealing with the background to the terms of reference for this visit, David wrote, "I have refrained from getting involved in this debate, since it seems to me that the problem is not having a law, but having a program which will work. And nothing will work. The state has limited resources, people have occupied/acquired most usable properties, and ex-owner heirs have infinite demands. Anyone who gets involved in this mess will be burned."

E. Land Administration. A general meeting was held with the Head of the Land Department at the Ministry of Agriculture. We reviewed what was going on and the issue of new and pending legislations.

Mr. Qilimi gave me a copy of Law No 8752 Dated 26 03 2001 "On Creation and Functioning of Structures for Land Administration and Protection" and asked me to give him my thoughts on the new law. It should be noted that for a number of years this consultant has been recommending that a formal structure for land administration be created. Law No. 8752, presumably does that. Law No. 8752 appears to cover the basic aspects of land management and protection for all rural lands in Albania. The structure of the system appears appropriate for Albania. The law like many others is general and needs rules and regulations or "sub-legal acts" for the proper implementation of the law. The general administration and functional framework is presented. It is now necessary to get into the specifics of what the offices in the decentralized system will do. These specifics have to be laid out in the regulations which I have not seen and assume have not been drafted. I had no further discussion with Mr. Qilimi or anyone else concerning land administration.

Mr. Qilimi then asked me to provide him with information on property taxation and property valuation. I think that those two subjects should be the subject of a separate consultancy. I did say that I would look into the issues when I went home, that I was not equipped to do it on the spot. I think the subjects are too complicated to be a small part of a three-week consulting effort.

I did ask him to contact the Ministry of Finance as I was aware a few years ago of an IMF led effort to deal with property taxation. I was not aware of what the outcome was, other than the fact that a property tax law was not enacted. I have included here a short issues paper on the issues surrounding a property tax system. I did not provide anything on the issues of valuation.

Criteria for Evaluating Property Tax Systems.

A property tax system does three things. It identifies and links taxable subjects (taxpayers) and objects (taxable property). It produces tax assessments. It collects taxes. If any of these is done poorly, tax equity will suffer, revenue generation also may suffer, and public acceptance will erode. A tax system may be thought of as comprising policies, procedures, data, technology, and people. The time dimension is important as well. From another perspective, the system consists of an administrative or internal control component, an assessment component, and a collection component. The administrative component controls the other two. The assessment component determines who is to pay a tax and the size of each taxpayer's share of total taxes. The valuation system and the administration of exemptions and relief measures are parts of the assessment component. The collection component receives tax payments, accounts for them, and deposits receipts in the appropriate treasury.

A number of criteria have been used to evaluate taxes. These criteria fall into administrative, social justice, economic, and political categories. Some criteria are complementary; others are mutually contradictory. In the final analysis, most are based on common sense. Notions of fairness, equity, and uniformity predominate. The criteria used as a rationale for, or to criticize, the property tax include:

Uniformity. Uniformity implies proportional taxation, often in relation to "ability to pay." As succinctly as anyone, the art critic Bernard Berenson expressed the wisdom of uniformity in taxation: "Governments last as long as the undertaxed can defend themselves against the overtaxed." Governments wishing to maintain popular support must concede the desirability of uniform taxation.

Neutrality. A common economic objective is *neutrality*, which has to do with designing the property tax so that it does not distort economic decisions. A uniform, broad-based tax is likely to be "neutral." Neutrality improves *economic efficiency*. An efficient tax encourages an optimal mix of the factors of production (labor, capital, management, and land), which according to economic theory increases general welfare. High taxes on one factor of production tend to shift investment toward others with lower taxes. Of course, one must distinguish the initial impact of a tax from its ultimate incidence. For example, a tax levied on the owners of apartment buildings might be passed along to tenants in the form of higher rents. Such shifting might be part of the rationale for some forms of discriminatory taxation; businesses, in effect, are viewed as tax collectors.

Harmony with Social and Economic Policies. Property taxes often are made deliberately non-neutral in order to further some social or economic policy. The list of possible objectives is endless. Common objectives include making housing more affordable (particularly for families with limited income); encouraging good works by nonprofit organizations; encouraging economic development; preserving farmland, forests, open space, wetlands, and historic buildings; protecting the environment; and expressing gratitude for military service in times of war.

Public Acceptance. Public acceptance will be the cumulative effect of many things, including level of tax, ease of payment, benefits received, openness, and perceived fairness. A genuine

commitment to public service and a successful public education program can build public acceptance.

Business and Investment Climate. The rationale for equitable taxation of business property is the need to provide a level playing field: overtaxed properties are at a competitive disadvantage. However, tax incentives—deliberate departures from the uniformity principle—are sometimes used to subsidize particular industries or to attract business and investment.

Openness or Transparency. Transparency is achieved when the system is understandable. Simplicity improves transparency. Transparency also goes hand-in-hand with *openness*. In an open system, taxpayers can easily obtain information, ask questions, lodge appeals, and make payments. Transparency improves accountability and is a characteristic of democratic government. The concept also can be applied to property markets. Open markets function better.

Cost-effectiveness. Conceptually, a cost-effective property tax system is one in which virtually all taxable property is discovered, valuation and other assessment errors are minimized, tax collections approach 100 percent of the total amount due, and the costs of administration (including taxpayers' compliance costs) are minimized. In practice, it is difficult to express all effectiveness measures in monetary terms, and each criterion must be evaluated separately. As has been illustrated elsewhere, the notion of cost-effectiveness embodies the economic concepts of marginal utility and diminishing returns. That is, a certain level of expenditure is needed before any measure of effectiveness can be achieved, but the optimal level of expenditure may be significantly below the level of expenditure that maximizes effectiveness. However, one can sometimes change a property tax system (for example, by installing a newer computer system) to achieve an increase in effectiveness without additional cost.

Buoyancy. The ability of tax yields to rise (and fall) with the economy and with revenue needs. Buoyancy is a characteristic of value-based property tax systems, but assessed valuations must be updated as the underlying market values change.

A Balanced Revenue System. Public finance scholars usually advocate a balanced revenue system. That is, the system should include several taxes and other sources of revenue. A tax on the capital value, or current market value of immovable property, can be an important part of such a system. Such a tax has a stable and reliable base, which is attractive during economic swings. If revaluations are frequent, the base also can be buoyant during periods of economic growth or inflation. Property value can be a good measure of a taxpayer's wealth or ability to pay. Many public services provided through property taxation are thought to protect property investments and, indeed, may increase property value.

Dedicated Source of Revenue, Local Government Autonomy, and Accountability. This issue is related to balancing the revenue system in that property taxes frequently are viewed as a *dedicated source of revenue* for local governments. Property taxes are uniquely suited to this purpose for several reasons. The immovability of the tax base makes clear which government is entitled to the tax revenue. Local government services often are provided to properties or their owners and occupants. The tax captures for local government some of the increases in the value of property that are partially created by public expenditures. Having a dedicated source of revenue promotes *local autonomy*. The visibility of property taxes focuses attention on the overall quality of governance and promotes *accountability*. The property tax is the only tax that

affords taxpayers the opportunity to review and challenge not only their assessments, but also the assessments on similar or surrounding properties.

Administrative Practicality. A tax on immovable property has the virtue of being administratively practical. In contrast with sales and income taxes, the property tax base is easily identified. The property tax is difficult to avoid. The costs of property tax administration compare favorably with the costs of administering sales and income taxes when taxpayers' compliance costs are considered.

A Valuable Fund of Land Information. Although capturing data on land and building characteristics is costly, the information collected is valuable. If up-to-date and publicly available, the information has many governmental and private uses. Satisfying private needs for land and building data can provide a source of revenue to defray part of the costs of administration.

Adhering to a policy of uniformity has several requirements. First, a definition of uniformity is needed. By definition, an ad valorem tax is proportional to value. Property tax laws address "uniformity" in two ways: (1) tax rates and (2) assessment ratios (the fraction-assessed values are of appraised values). Both must be uniform to achieve uniform effective tax rates (a property's *effective tax rate* is the property taxes assessed against it divided by its value). In addition, *actual* assessment ratios must approximate *legal* ratios. Achieving this requires accurate, or at least uniform, valuations.

Second, responsibilities for departures from uniformity must be clearly assigned. That is, taxpayers must be able to distinguish between, on the one hand, differentials in tax burdens caused by differential tax rates, assessment ratios, exemptions, limits on changes in assessments, and the like and, on the other hand, differentials caused by non-uniform valuations. This also is a transparency requirement.

Third, there must be a clear standard of value. Current market value provides the fairest, most objective basis for an ad valorem tax. Revenue needs may change annually. So may property values. Some properties will increase in value while others decline. A uniform relationship between property value and property taxes can be maintained only if current market value is the basis of assessments.

Last, the things to be valued (and taxed) must be clearly defined in legislation. All taxable property in a tax district must be discovered and accurately described.

A policy of uniformity also can have a buoyancy benefit. When effective tax rates are uniform, governments can more easily identify a publicly acceptable rate of tax. When effective tax rates are not uniform, which occurs when valuations are out of date, governments take their rate-setting cues from relatively over-valued taxpayers. As a result, they decide upon a general rate of tax that is lower than the rate the under-valued would accept. Consequently, less revenue can be raised than when valuations are uniform.

F. University of Tirana, Faculty of Law. Although a visit was not made to the Faculty of Law, a number of discussions took place. One thing was clear, there the PMU would not be initiating

cooperation in property education, because the current leadership at the Faculty of Law does not want to discuss any development of the property curriculum. We would have to work through members of the Faculty who are sensitive to what needs to be done. The Faculty of Law at the University of Tirana is in educational difficulty. From all the reports, the educational level is extremely low and there are a minimal number of resources. However, the leadership is unwilling to explore the manner in which the Faculty could be improved. Although we continue to explore the possibility of making inroads there, it does not appear likely to happen under the present leadership. More importantly, from the perspective of the Immovable Property Registration Project, the property curriculum is lacking and there appears to be nothing that is planned to improve it. In fact, it has been suggested that we might try to approach the University of Shkoder, Faculty of Law. That had already crossed my mind. There was no time to pursue it during this visit.

Nonetheless a meeting was held with Professor Mariana Semini who is member of both the University of Tirana, Faculty of Law and the Magistrates School. Our discussion was frank and meaningful. She agreed with all of the points that we made. Unfortunately, she is primarily a professor of Penal Law [I have been told she also teaches some civil law, but she did not mention it in the context of our discussions] and claims she does not have the kind of influence in the system that would be meaningful for us. However, we did devise a five point plan similar to the plan which I have in place in another law school which we are assisting through the University of Alabama. She indicated an interest in consulting with USAID program officers to see if they would assist us.[4]

The plan that was discussed and agreed to include the following:

a) Support the development of the Faculty by creating some scholarships so faculty can go abroad and get a closely supervised LL.M. in the field in which they are or will be teaching. Include a bond in the program so that the person will return to Albania and commit to a minimum number of years of teaching. Our interest, of course, is to help develop the property curriculum.

b) Commence immediately the preparation of a Commentary on the Property law. This would include the Civil Code provisions as well as the Law on Immovable Property registration. There should be two separate approaches utilized in the preparation of the Commentaries. One should be aimed at University students and should be more deeply analytic. The second should be aimed at the practicing bar. It should be less

[4] A discussion was held with a member of the USAID staff and he simply pointed to some US NGO that was in place in Tirana as their favored group to deal with legal issues. This was unacceptable as this group neither knew anything about the problems we were facing within the IPRS System and the experience we had dealing with them in the past was negative. We had tried to make inroads with this group. I think they are called Pan American something or other, and they were not interested in what the Land Market Project is doing. It turned out that on, at least, two other occasions attempts were made to communicate with them and they made appointments and then cancelled them before the appointed time arrived. It is unacceptable to work through them. I explained this to the USAID Program Officer, Mr. Posner. Another option was explored briefly by resident staff and that was to sub-contract some funds from the extension of the project to the University of Alabama and let UA deal with the Faculty of Law – either Shkoder or Tirana.

analytic and geared to solving of practical problems. It is possible to put together small teams of people, both Albanian and foreign, who can prepare both of these manuscripts. It would be essential, of course, to get some cooperation from the Ministry of Justice so that the sources of the property section of the Civil Code can be divulged and comparative discussions could take place.

It should be noted that the Soros Foundation had already tried to support the effort to write Commentaries for the various legal areas. They failed. They had gotten teams together of 5 to 7 persons and they found that the teams were too big and unwieldy. We were suggesting teams of two or possibly three at the most. I took the liberty of going to Mr. Artur Metani who is the Coordinator of legal programs at the Soros Foundation in Tirana. He indicated that they would be interested in trying once again to put things together for the Commentaries.

c) Library development. There should be a librarian involved who can assist with collection development issues. There should also be training of librarians and faculty and students on electronic sources of the law and how to use the available sources. The use of the US based electronic systems can be made available through members of US law school faculties who are associated with the universities in Albania and the consulting librarians would be able to provide training courses on the use of these systems [which contain an abundance of European materials in many of the leading Europeans languages as well an English]. This could potentially provide materials for the students which would be downloaded and put in the library for their use.

d) Develop the mediation system for hearing property disputes. This would be the development of a mediation clinical operation at the Faculty of Law [Tirana or Shkoder] to train students in the operation of mediation and prepare them for mediation in general, as well as to handle property cases. There was some interest in this as Professor Semini is associated with the Conflict Resolution Foundation which is working on the issue of mediation and setting up mediation centers throughout Albania [see above in “A” for a discussion of mediation].

e) Create a system of distance education to be able to expand the curriculum, with special emphasis, of course, on property issues. This could be developed through short visits by members of an American Faculty of Law who would then follow up though distance education. UA is presently doing this with Faculties of Law in Switzerland, Australia and Ethiopia. The equipment is easily available and uncomplicated to use. It is a distinct possibility to put such a program in place.

These five elements would make up the focal point of a program to assist the Faculty of Law [Shkoder or Tirana, or both] with a special emphasis on property to begin with and then to other disciplines. As noted in the footnote, USAID, when approached with the possibility immediately referred to an NGO which is in place. They would not be acceptable for the reasons cited in the footnote. However, if it is possible to sub-contract some funds to give this program a try through the Land Market Action Project there would be the possibility of making some important inroads that we have been unable to begin over the life of the project. In many ways, raising the level of

legal education is a central factor in making the immovable property registration system work. As will be seen from the discussion in Section "H", the level of operation and understanding of the policies base of land registration is very low and needs to be raised and spread more widely to the professionals who are working in this area.

G. Location of the IPRS. The Consultant did not spend much time on this problem. It is felt that it does not really make a difference where the IPRS system is located. There is no reason to assume that the authority of the system would be more efficient if it were in the Ministry of Justice. In fact, one might conclude that some of the more technical aspects of the registration system would be ignored as the "legal" relationships would be considered primary. A system which integrates the legal and the technical, is crucial. This consultant feels that it is better to place the IPRS system within the bureaucracy in a place where there would be respect for all the aspects of the system. I am afraid that the present location of the system is not appropriate because the Chief Registrar appears to operate independently. An institutional structure is necessary which requires the Chief Registrar to report to someone who is able to assume responsibility for both the legal and the cadastral [survey and mapping] aspects of land registration. Presently, the IPRS system is under the Council of Ministers; there is no close and regular oversight of the operation of the system. In fact, because the system is new and there is no one with any experience, it allows the Chief Registrar to deal with things at his own pace and thus many decisions are either put off or questionable practices arise. The system should be running more efficiently than it presently is. However, it is not clear how a change of placement would affect it positively. If the Council of Ministers took the operation of the IPRS more seriously and made the Chief Registrar more accountable for the administration of the system, it might work. At present there is no apparent accountability and it is vital that this situation be corrected. Again, the answer is not placing the system under the Ministry of Justice as the important technical aspects of the system will be shunted to the side. In the final analysis, a Land Information System must be developed and the optimum situation would be to place all aspects of land administration under one roof and create a Land Ministry which would deal with all aspects of land planning, registration and administration.

H. Initiatives with Chief Registrar:

1. Movement to completion of first registration

Application of Section 24b in dealing with First Registration.

The application of Section 24b has caused some confusion. To reconcile this confusion a number of approaches have been taken. When the application for first registration does not conform to the provisions of 24a, one approach is to set the application aside hoping that the applicant will be able to magically appear later with a full set of documents which justify registration. Another is to interpret 24b in the narrowest possible manner to ensure that nothing is done unless something is present to provide the information which is necessary so that no mistakes are made

in going forward with the registration. This has slowed down the process of first registration, because a very high number of cases do not have a full set of documents which would justify going forward with the registration process. The law is drafted in a way to provide for two kinds of situations. First, when everything is in order all documents or whatever is necessary to make a decision are present [24a] and second, the situation in which documents or other information are missing [24b]. In both situations it is necessary to move forward to full registration. However, the procedures for 24a and 24b are different.

The text of 24b as it presently appears in the Law No. 7843 of July 13, 1994 is as follows:

> "For those individuals, families, and legal persons, private or state, who posses the property in conformity with law and do not hold any ownership document under Paragraph a, they are obliged to present to the Registrar an application for registration of ownership. This application shall contain a notarized, personal declaration of ownership, a survey plan of the immovable property, and notarized declarations from neighbors and other persons as to the correctness of the boundaries and as certified copies of different documents which support the application for registration."

To deal with the problems of the application of 24b, it was decided that the Consultant would visit as many District Registration Offices as time would allow to discuss in small groups the intention of the drafters in putting section 24b in the 1994 Registration Act. The intended audience included the District Registrars, the Lawyers who work in the Registration Office, the Coordinator [the PMU employee who is responsible for carrying out first registration] and the members of the Field Investigation Teams [1 plus 2 teams]. Meetings were held in Tirana I, Pogardec, Korca, Shkoder, Leža, El Basan, and Kavaje. Meetings were also held with the Coordinators of Durres and Fier. In each of the meetings it was requested that all field teams and other personnel be present. In the larger cities the group ranged up to 20 people. In the smaller ones the groups were under ten. At different meetings there were members of the PMU and Chief Registrar's staff. In fact, the Chief Registrar and the Lawyer from the Office of Central Registration accompanied the Consultant and members of the PMU legal staff to Shkoder and Leza.

In the meetings a series of cases were presented to the consultant. The problems were considered and answered. I had intended to put the cases in this report to provide examples of situations in which Coordinators and Registrars were having difficulty in dealing with various properties. However, after considering the matter for some time it did not seem important to include the examples. They all pointed to one situation. In cases where there was any incomplete data or there was a question about some of the data that was presented, it was appropriate for the one plus two teams to do an investigation. In other words, wherever there is a question concerning the appropriateness of going forward with a case, it is a matter for the application of section 24b and the field team should do an investigation, and try to get affidavits from the neighbors who adjoin the property in question. If it is not possible to get the affidavits, then the one plus two team should seek the "best evidence"[5] possible [imaginable] which can justify going forward

[5] The is a formal rule of evidence in the common law [and most probably there is a counterpart rule in civilian systems] which allow the best evidence available to be presented to a court to justify a claimed

with the first registration. During the meetings I repeated a number of times that **the goal is to first-register properties**. It is not to find an excuse for not registering the properties when there is an application or when a neighborhood is being considered for first registration. It is therefore important to obtain the standard evidence of ownership, but if any of it is not available other documentation, affidavits from relevant individuals or other pieces of evidence which are able to assist in proving that a particular person should receive ownership must be acceptable. It is very difficult to be explicit as to the type of evidence that is acceptable. A wide range of unexpected information might become available in any given situation. It is up to the one plus two team to evaluate the evidence and make the decision as to whether or not it is acceptable for first registration purposes. The process must move forward. Anytime, a someone desires to challenge the decision, at any level, there are processes available for such a challenge.

For the most part, the meetings were frank and open. A set format was followed. After a brief introduction, the Consultant gave a short talk about section 24b, it purpose and application, the kinds of problems it is meant to deal with and the changes that have to be introduced to possibly amend the law, issue new Orders from the Chief Registrar and to amend the Regulations that set out the manner in which 24b information should be dealt with. It was felt that certain aspects of the application of 24b were not clear and had to be amended for purposes of clarification. It was also felt that certain aspects of 24b did not accurately convey the purpose of the section and therefore needed quick amendment.

In these District meetings, after the consultant's presentation, the floor was opened to the group in order to explore the type of problems that the field teams, the coordinators or the Registrar's Office had encountered, and were unsure of as 24b problems or were reluctant to go forward toward first registration because of missing documents or some other defect. A catalog of different cases were gathered from the different offices which help deal with the application of the section at issue. However, the most prevalent point was that a property had not been considered because certain vital documents were missing. The answer always was that 24b provided the opportunity for the 1 plus 2 team to conduct an investigation.

It was interesting to note that a number of offices indicated they had no problems with the application of 24b which was quite heartening. However, in the course of discussion it then became apparent [because of a direct statement or because of an indirect reference] that there were no problems with the application of 24b because whenever a situation arose where there were missing documents the case was put aside until the document appeared. It became readily apparent that there were serious problems with the implementation of 24b which require careful and direct discussion. At first the discussion was a bit misleading as the members of the field teams and others who were in the meeting were very reluctant to say that the reason 24b was not a problem was that they ignored the application. However, by the end of the round of meetings they admitted this. By the end of the meetings Coordinators were saying directly that they did not implement 24b. We must remember that the importance of section 24b is that <u>when ever in the process of first registration there is a problem with documents or anything else and section 24a does not apply, it is a 24b problem which allows for an investigation using the field teams.</u>

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position. This rule would apply when specific documents or other evidence is not available, but what is available [even though it is not what would have been optimal] can justify accepting a particular position.

The best available evidence is then used to proceed with the first registration process. This is how the Consultant proceeded.

The clearest application of 24b is the registration of urban villas which pre-dated 1991 and had no documents or were lacking information in some important aspect. The discussion generally dealt with the consideration of the villa situation and branched out into a more general consideration of the problems the offices were facing in the application of 24b.

There is a second problem that is reported in many places concerning villas. The situation is when the villa was on the property prior to 1976 when the state changed the nature of ownership. They allowed the individuals in the building to remain in ownership. However, they nationalized the land so that all the land belonged to the state. It is recommended that if there is no conflict involving this land and building, and there are either documents, or a completed investigation under 24b which shows that the owner of the building has been on the land since the nationalization, it is then permissible to do a first registration for the owner of the building. However, two things must be emphasized, (1) there should not be any other claims to the land other than that of the building's owner and (2) if there are no documents the clarity of the situation is determined through the field investigation under 24b. It would then be possible to declare the land and building owned by the same person and a kartela can be filled out.

If there is a conflict concerning either the building or the land and there are missing or no documents, the practice has been to do an investigation and if the conflict points to split ownership, i.e., one owner for the land and a second for the building, two kartelas are opened. One would recognize the ownership in person "a" of the land and the second would recognize the ownership of person "b" of the building.

However, there are other situations in which 24b should be used. We must remember that 24b is relevant whenever there is a need to supplement the available information. It is not only relevant when there are no documents, but also whenever the available information is not sufficient to go forward to first registration

As I said above, I was going to go into some of the problem cases. However, in closer analysis the problem cases all pointed to one of two problems: either no documents or incomplete documentation. In both cases the intention of the Registration Act is to get the best available information through section 24b and to move forward towards the completed first registration.

In order to clarify the manner in which section 24b should be used a number of amendments should be made to the existing Registration Act and its Regulations. The Chief Registrar should issue a new Order in which the application of 24b is made clear. It is not acceptable for persons working in the Districts to simply put aside the consideration of properties for first registration when documents are missing.

2. Amendment of Regulations, Issuance of new Orders relating to 24b and proposed amendment of Section 24b in the Registration Act

a. Orders.

No. XXX, dated July XX , 2001

FOR

The Implementation of Section 24b of the Law Dated July 13, 1994 for the "Registration of Immovable Properties" in Urban Areas

Based on Article 3 law 7842 dated July 14, 1994 "For the registration of immovable properties":

I ORDER

To clarify Order No. 307/1 dealing with the implementation of section 24b when some or all of the necessary documentation for first registration is not available.

1. In order not to obstruct the registration of immovable property that does not fulfill the requirements of 24 a in the law "for the registration of immovable properties", Section 24b of this law should be applied in urban areas where the registration is not completed.

2. The property registration based on section 24b shall be completed through the reference to following documents, if available and to section 3 below:

- Any documents referred to in Section 24a with the appropriate notarial stamp;
- The documents referred to in the Regulations that support law 7843 "the registration of immovable properties";
- A signed receipt from any appropriate source which verifies that the applicant has been a possessor of the property in question since before 1991;
- inheritance documentation if the original owner has died;
- The updating and verification of the maps from the immovable property registration offices based on the documents mentioned above and any other relevant documents.

3. If there are either no documents available or some of the required documents are missing, it is permissible to use the "best available evidence" which can be gathered to support the application for registration. This evidence shall be presented in writing to the District Coordinator for review and, if approved, to the Commission referred by Order No. of July, 2000 for further consideration as part of the First Registration process.

4. The registration offices in the districts are responsible for the implementation of this Order.

b. Amendment of Regulations.

There are a number of amendments necessary to the Regulation “For the work of the Immovable Property Registration Office dated 8 April 1999 as amended January 2000. The amendments proposed at this time are to parts of sections 16, and 17.

16.3 will change by deleting “notarial declaration from adjoining owners” and adding:

> “A declaration in writing, if available, from adjoining neighbors or from other persons living in the neighborhood who can attest to the accuracy of the situation at hand.”

16.5 should have added at the end of the list:

> “any other document or information in any acceptable form, oral or written, which is available.”

These two minor changes are made to section 16.3 and 16.5:

They are proposed because the field team [1 plus 2] is conducting the investigation and should be given a maximum amount of credibility when they conduct an investigation. They are responsible for the preparation of a report which must be reviewed by the Coordinator. There are three members of the team and a further person who will review the findings. The report on the appropriateness of completing first registration will then go to the Commission [also three persons] for final review before a decision is made to display the property. With the number of reviewers in the process and the fact that the field team is responsible for gathering information, it should be considered perfectly acceptable to accept the findings of the field investigation. If there is going to be abuse, it is just as easy to include the Notary in the scheming. Therefore, the word of the field team and the subsequent review of the information should be enough to justify a move forward to first registration. This would also eliminate some of the costs that are imposed on the situation as the applicant would be required to take the field team’s information and have it notarized.

Second, it should be made as clear as possible that the failure of one of the abutting neighbors to attest to the fact that the applicant has been there for the period that justifies registration [before 1991] should not delay the process. It also should be clear that it is possible to speak with persons in the general neighborhood who would probably be aware of the situation. In dealing with older villas, it is generally true that the situation is stable and it should be easy to gather relevant information to clarify the situation for registration purposes. There will be problems, but the few problem parcels that exist should not control the situation.

Article 17.

All the language of 17 and 17.1 should be eliminated from the Regulation. In their place the following should be inserted:

> "In the case of immovable property, right or occupancy that existed prior to 1991 which have no documentation, the applicant shall fill in the forms according to section 24b of the "law on the registration of immovable property" of July 1994. There shall be an investigation in which all the sources referred to in section 16 shall apply. If it is possible to recommend that first registration take place, such a recommendation shall accompany the written report of the investigation of the parcel in question. A decision to move forward in the process of first registration shall then be made.
>
> 17.1 If it is not possible to recommend that the process of first registration shall continue, the person applying for registration shall be informed of the missing information and should be asked to provide notarized documentation that will support first registration. If the information is not forthcoming, the person shall be registered as a possessor and the owner will remain the "state" until appropriate evidence is available. In that case, it is possible to move forward to first registration."

Section 17 and 17.1 is changed significantly to allow for a move forward to first registration. First of all, a flexible approach is taken to the investigation. Rather than specify the precise type of documentation that is necessary, the field investigation teams [2 + 1 teams] should be flexible and gather any information that will support the registration of the property. Since the mission is to "register property" and not to find arguments which will prevent the properties from being registered, it is necessary to use anything that is relevant to support moving towards first registration. However, as 17.1 makes clear, it is not necessary to make any notation that "the owner is not verified" since there is always an owner according to the immovable property registration system. The owner in the case where it is impossible to prove that the property should be registered in the name of a particular person is then the "state." All the steps should be followed to complete the first registration in the name of the "state."

If the ownership is denied to a person without documents, and evidence to prove ownership later is located or changes for some other reason, for example, purchase of the property, the ownership can be changed from the "State" to the person. However, the proper steps must be followed to justify the subsequent registration.

c. Amendment of Section 24b of the Registration Act of 1994.

The changes that should be made to section 24b of the Immovable Property Registration Act are not very extensive. In the second line after "ownership document" there should be added the following:

> "or other appropriate written documentation which will be sufficient"….

On the third line after "notarized" and before "personal" that out the comma on the fourth line after the word "and" take out the word "notarized" so that part of the section shall read:

> "and declarations from neighbors and other persons as to the correctness of the boundaries and certified copies of different documents which support the application for registration."

There are two changes to article 24b of the Immovable Property Registration Act. The first is to make sure that it is not only ownership documents that are presented to justify registration but **any** document that is appropriate to assist the applicant. The second change deletes the word "notarized" from the statements concerning boundaries. Whenever there is a question of boundaries the field investigation team [1 plus 2 team] makes a field visit to the property in question. If the field teams verify the boundaries through testimony of the abutting neighbors or others who know of the situation in their neighborhood, the information of the field team does not have to be notarized. The field team, as has already been stated above, presents a report to the Coordinator and ultimately to the Commission appointed by the Chief Registrar. These checks should be an adequate review of the information for a decision to be made concerning the appropriateness of registration. There is also the display period during which claims can be filed and other interim steps that allow for a careful and appropriate decision concerning registration to be made. Thus, these minor amendments to section 24b are recommended.

3. Observations and Recommendations on the use of Section 24b.

I would like to make some observations. The purpose of section 24 of the Registration Act is clear. For the most part, the District Registration offices are unwilling to apply 24b which is intended for use when the proper documentation is not available. The purpose of 24b is to allow the first registration teams to move forward when there is a problem with missing documentation by gathering evidence that will clarify the situation for first registration. Once the evidence is collected and evaluated, it becomes possible to proceed forward to the posting of the information and an ultimate registration of the properties that have missing documentation. There are a number of chances to challenge the information along the way to first registration. The review can take place to clarify the situation and it ensures that the first registration process should move forward. From the interviewing that our team did in the various Districts during the month of July, it appeared that most places were not following the rules and utilizing 24b when the situation called for it. As I was told quite directly at the end of my interviewing period, "we simply put aside all properties that have documents lacking or other problems." Those are the properties that should be dealt with under 24b and nothing is being done to process them.

Two specific reasons have been given to me for this reluctance. The first is that the Registrar is the one who controls many of the decisions in the Districts. The Registrars have made it very clear that they feel that 24b is ambiguous [which it is not] and therefore until there is a clarifying "Order" from the Chief Registrar, they will not change their process. The Chief Registrar, on the other hand, has verbally agreed with the assessment on 24b and said repeatedly that the section should be applied in the manner discussed during the office visits in July, 2001. However, he has also said that he must issue an new Order clarifying how 24b should be used. He has also asked that the Regulations to the Registration Act be revised so they reflect the proper procedure. This

was all done during July and there has been no action. In fact, it is very difficult to get any action from the Office of the Chief Registrar.[6]

Therefore, it is **recommended** that the field teams [known as the "one plus two teams"] be separated from the Registrar's Office, in all of the districts where there is a significant number of urban properties that have been delayed in the first registration process, and the following steps should be taken:

a) the field teams should be put under the full authority of the Coordinator and the Office of Registration of the PMU;
b) the field teams should relocate by renting space and setting up temporary sub-offices in the actual neighborhood in which there are properties that have not been processed for first registration;
c) the temporary offices should remain open as long as it takes to do the investigations necessary and to complete the process of public display;
d) upon completion of the process in one local office, the team should move to a new locale following the same process, namely maintaining a local office until the property in that neighborhood is through the public display period of the first registration process; and
e) if there are numerous neighborhoods that are unfinished in any district, the number of one plus two teams should be increased in order to complete the process in accordance with the schedule that has been drawn up.

This process should be introduced immediately in order to move the first registration process forward. This process will not depend upon action by the Chief Registrar. If he does not issue the appropriate Orders, the Process will be moving forward guided by the Office of First Registration in the PMU. It will not depend upon orders from the Chief Registrar.

It is also **recommended** that the role of the notary in the registration process be limited. The notary is only needed to affirm the accuracy of signatures. Therefore, it is **recommended** that each Registry throughout Albania should have a notary attached to it for purposes of affirming signatures. A specific, reasonable schedule of fees should be worked out. It can either be as a contract for a specific time period or on the basis of how many documents are notarized. In any case, the price of the notarization should be included in the fee that an applicant pays to the Registry. Since the notaries have assumed a powerful position in the legal system of Albania, this proposal has to be dealt with very delicately in order to avoid too many complications. At present, the price increase that have been imposed on the users of the notary system are having a negative effect. Unless there is some kind of control imposed over the notary system, they may well be dictating how the system works in the future.

[6] Without going in to this with any more detail, it is also possible for the Office of Chief Registrar to use procedures that are meant for extraordinary situations. The procedural flexibility allows irregular processes to develop. The goal, as I have said a number of times, is to register properties. However, it appears as if alternative processes have been developed in order to provide personal gain for members of the Chief Registrar's staff.

To prevent this from happening it is therefore suggested that the role of the notary should be cut back. In addition, where the notary is considered an integral part of the system, there should be some control introduced. Placing a notary in the office of the Registrar would be one way of controlling how involved the notaries can become in the system of immovable property registration.

4. Certificate Amendments

The Consultant was asked to propose an amendment to the title certificate. The Chief Registrar provided some materials from Turkey that were gathered during a study tour to Turkey. It was explained that there were several features of the Turkish Certificate that could be included in a revised Albanian certificate. The Turkish Certificate was in the Turkish language and it was never satisfactorily translated. In addition, the questions raised concerning the desired revisions of the certificate were never answered. The redesign was requested because the stock or pre-printed certificates had been depleted. At the same time a delegation from Tirana had gone to Turkey. While there a number of administrative details caught the eye of members of the Albanian delegation. One specific matter was the certificate style that is in use in Turkey. The two most important elements of the Turkish Certificate were the inclusion of a photograph in the upper left hand corner and the numbering of the certificates. These two elements, it was felt, were important elements of security. It was agreed that as part of the consultancy, a redesign would be attempted. However, there were two distinct processes that could be utilized. Under both processes the certificate would be computer generated. The less complicated process would generate a copy of a certificate into which a certificate number would be typed and a picture of the person in whose name the certificate was to be prepared would be pasted on the spot which was set aside for the photograph. The second alternative would also be computer generated, but the photograph would also be generated by the computer and would be included on the certificate. In both cases a Polaroid styled system would be necessary. In the less complicated system the photograph would be generated, pasted on to the certificate, and stamped or impressed in order to provide some measure of security. In the second system, which would be more secure, the picture would be generated onto the certificate through the use of software after the picture was taken.

Therefore. Two changes are proposed: First there will be a box on the top left corner for a photograph to be generated by computer or pasted in by hand and sealed. Secondly, there will be a slot at the bottom of the certificate in which a number will be entered. This can be done electronically or by hand. In keeping with the paste on picture, with seal, it is appropriate to handwrite a number and seal it with an appropriate stamp. The number will then be recorded in the appropriate places – on the Kartela and in the relevant index book. However, it is **recommended** that the photograph be included electronically and the relevant number be generated electronically, as well. Thus, the system that provides the greatest security should be used.;

5. Personal chores for the Chief Registrar

The Chief Registrar raised a number of individual cases with which he asked the Consultant to deal. The cases all could be dealt with in the context of the Registration Act through the use of

section 24b. At first, it was unclear why the Consultant was asked to get involved in these cases. It ultimately became clear that the Chief Registrar and his senior staff were requesting that the Consultant give some legal advice on cases for which the actions of the Chief Registrar and his staff were being questioned. Under the circumstances in which the system seemed to be politicized, the Consultant simply backed away from providing any legal advice on those matters. He felt these questions were the kind of matter for the Chief Registrar's Legal Advisor.

Conclusion. This concludes the report for July 2001.

ANNEX I

Commentary and Draft of the Mediation Board Act.

The Immovable Property Mediation Board Act is one of the components of the set of legislation that will assist in the development of a functioning property registration system. In 1996 it was prepared "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 hearing body 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."

The Mediation Board 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 court as a matter of appeal or judicial review if the dispute contains a legal, as opposed to a factual, question.

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 Mediation Board, which hears a broad range of immovable property disputes.

An Immovable Property Mediation Board will be set up in each of Albania's thirty six Districts. Each Mediation Board 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 Mediation Board 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 Mediation Board. 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 Mediation Board. The decisions of the Mediation Board will be made by majority vote unless there is an issue of law involved; then the Chairman shall have the controlling vote.

Each Mediation Board shall also have a Clerk (and as many assistant clerks as are necessary) who is responsible for all of the administration of the Mediation Board 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 Mediation Board 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 Mediation Board. 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 Mediation Board 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 Mediation Board 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 Mediation Board can also order the accused to pay money damages to a petitioner in installments if the circumstances so require.

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

c) The Draft of the Immovable Property Mediation Board Act follows:

PARLIAMENT

LAW

On the Creation and implementation of an Immovable Property Mediation Board 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 Mediation Board and the chief administrator of the Immovable Property Mediation Board in a District;

"clerk" means the officer in charge of the court records;

"counter-petition" 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 Mediation Board;

"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 Mediation Board which orders the accused to admit or deny the petitioner's claim.

PART II

LOCATION AND STAFFING OF MEDIATION BOARDS

Section 2

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

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

Section 3

1) The Chairman and Assessors who will sit on the Immovable Property Mediation Board shall be appointed by the Minister for a non- renewable 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 Mediation Board 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 Mediation Board as Assessors.

Section 5

1) The qualifications considered appropriate for appointment as Chairman of the Immovable Property Mediation Board 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 Mediation Board 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 Mediation Board 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 Mediation Board 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 Mediation Board Presiding Officers and additional Assessors shall be appointed by the Chairman of the District Immovable Property Mediation Board, 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 Mediation Board shall have a Clerk and one or more Assistant Clerks as is determined by the amount of activity that takes place in each District Mediation Board.

Section 9

1) to receive the petitions and counter petitions 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 Mediation Board;

3) to ensure that each person who should receive notice of completed or pending action of the Mediation Board 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 Mediation Board operates smoothly.

PART **III**

SUBJECT MATTER JURISDICTION

Section 10

The Immovable Property Mediation Board shall have primary jurisdiction over proceedings instituted where parties have conflicting claims to immovable property, including the following issues: [include restitution commission issues and bashkia cases – building permit 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) registration of immovable property;

d) 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) matters relating to the issuance of building permits;

h) removal from possession or eviction from immovable property;

i) expropriation of immovable property by the government;

j) agricultural or agro-industrial contracts of lease;

k) transfer of property in contravention of the applicable law;

l) exchanges, illegal subdivisions and other irregularities involving improper division or partition of immovable property;

m) succession to immovable property;

n) possession of both urban and agricultural immovable property;

o) applications for the use of immovable property which involves issues of the environment;

p) use and development of immovable property for purpose of conservation and development and the use of natural resources;

q) the recovery of publicly held immovable property from a person in possession; and

r) 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.

Section 13

The hearings of the Immovable Property Mediation Board 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 Mediation Board as the testimony is merely the opinion of the experts.

PART IV

PROCEDURE FOR THE MEDIATION BOARD

Section 17

1) A case shall begin when the petitioner files with the Clerk of the Mediation Board, 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 counter-petition 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 Mediation Board or prevents the judgment of the Mediation Board from becoming final by filing a notice for judicial review as provided in **39**.

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 non-delivery 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 as 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 Mediation Board require such an exchange.

Section 25

The Chairman of the Mediation Board 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;

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 Mediation Board 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 Mediation Board 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 Mediation Board 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.

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.

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 counter-petition 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 non-parties 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 Mediation Board, in their discretion, may participate freely in the examination of the parties and witnesses.

6) The Mediation Board 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 Mediation Board, 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 Mediation Board 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.

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 Mediation Board 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 Mediation Board may also revise the schedule of installment payments when the paying person, after presenting to the Mediation Board evidence of the difficulty in making payment, has convinced the Mediation Board that a rescheduling of payment is necessary.

3) Under no conditions may the installment system created for the payment of a monetary judgment by 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 Mediation Board 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 Mediation Board.

PART **V**

MISCELLANEOUS

Section 41

There shall be fees payable to the Immovable Property Mediation Board 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 Mediation Board 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.
