

The needs and rights of local communities for forest product & services and sustainable forest management in Albania

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Abstract:

Key challenges faced by Albania in moving toward sustainable resource management and use and repairing some of the enormous environmental damage done over the past 5-6 decades have had to do with property rights issues. Environmental degradation and impoverishment have been most profound where rights are vaguely defined and where neither the State nor local community are in positions to uphold rights, whether based on custom or through formal legal assignment.

Since 1995, in line with the nation's move toward more decentralized government and devolution of power, a process of divestment of communal forests and pastures has been unfolding. Beginning with the transfer to communes of only administrative and contractually-based re-assignment rights to local users associations, preparations are now underway to have communes, the lowest rung of local government assume ownership of these areas, ultimately amounting to some 500,000 ha.

Tenure insecurity pervades all land sectors, characterizing at least 30% of agricultural land and much of the forests and pasture land assigned in-use through communal forest pasture management initiatives to users associations. Rights, which may or may not coincide with claimed ancestral rights exercised with community sanction, are not documented adequately and contract terms are only 10 years long. Many feel vulnerable to losing these rights through reassignment. In-use rights are also inadequately defined and no provision exists for transfer under this form of tenure. Although the Civil Code does lay out rights and duties associated with usufruct tenure, these provisions may not apply to State-owned forests and pastures because of their classification as "public" lands. For agricultural land, ex-owner and restitution conflicts inhibit investment and transfer, often resulting in abandonment or non-use of the land.

Starting the transition with what amounted to an institutional and legal vacuum, it is understandable that rules, regulations and the administrative structures took shape in somewhat of a piecemeal and reactive fashion. Reassembling the pieces into a coherent and consistent framework poses a major challenge today. Legislation and lines of authority tend to be fragmented based on the type of land or resource involved; even when these are the same, lines of authority are often unclear and coordination weak among the various ministries, the executive and local government organs being assigned ever wider responsibilities over natural resource management. Moves in the direction of inter-sectoral coherence and coordination have been occurring, as with the increasingly prominent role of the Ministry of Environmental, Forest and Water Administration (MoEFWA).

As development and natural resource challenges begin to be viewed in a more integrated fashion, these deficiencies become all the more glaring and problematic. Also becoming apparent are some unanticipated sets of issues. This point applies to contexts such as micro-catchments, designated protected areas and priority tourist zones which encompass, diverse landscapes, types

of land and tenure statuses. In addition to harmonizing the property and livelihood interests of private actors, doing so between the public and private interest becomes central.

Keywords:

Land tenure; user rights; legal, policy framework, sustainable forest management

Introduction

Albania has a total surface area of 28,748 km², with a population of approximately 3.4 million, forests and pastures cover about 69% of the country's area. The distribution of the forest in the different administrative units (districts) is quite uneven and forest types are strongly affected in their distribution by climatic and edaphic conditions, as well as by present and previous land use patterns. The agriculture and forestry are two important components on land use development in rural areas and closely linked with each other during the history of human society development. The Kanun was the first traditional law in Albania (also known as Leke Dukagjin's Kanun for the northern part, Skenderbeg's Kanune for the central part and Idris Suli' Kanun for the south mountainous part), have special articles on common and private land use and the villages traditionally have had the right to use either in common or separately by clans/families, the forests and pastures situated close to their settlements based on different agreements of village council of elders.

The first forest Law of January 1923 was based on this tradition and in the French and Turkish laws for forestry, divided forests and pastures in Albania into three main categories: private, commune and state. On August 29, 1945 the communist regime in Albania declared that all land which had been Communes or village or private property became state property. In 1967 and thereafter, the regime implemented a clear-cutting of some 280,000 ha. of forests throughout the hilly regions of Albania, which had disastrous results for the forests. During the years this policy was in effect, a large proportion of these "new agricultural lands" never achieved acceptable yields and became degraded and eroded (so much so, that many farmers even refused to take this "arable" land back during the 1991-1996 agriculture land distributions).

Since 1995, in line with the nation's move toward more decentralized government and devolution of power, a process of divestment of communal forests and pastures has been unfolding. Beginning with the transfer to communes of only administrative and contractually-based re-assignment rights to local users associations, preparations are now underway to have communes, the lowest rung of local government assume ownership of these areas. Although the Civil Code does lay out rights and duties associated with usufruct tenure, these provisions may not apply to State-owned forests and pastures because of their classification as "public" lands. Discussion of existing framework conditions, will be based on observing the set of political objectives, national commitments and strategies introducing the concept of sustainable development. This concept stipulates that ecological, economic and social aspects must be considered in a balanced manner, applying especially to the land tenure and its impact in degradation of natural resources. Keeping the abovementioned in mind the scope of present assessment of land tenure aspects in forest, pasture and agricultural sector in political, legal and administrative framework can be analyzed by the following guiding questions:

- What are the nation's objective, strategies and guiding concepts for forest sector development. Do they reflect basic commitments to Sustainable forest management

- Does the effective legal framework hold provision for linking forest sector development to crosscutting issues such as users rights, land tenure, land degradation, poverty alleviation etc
- Does the environmental degradation and impoverishment have been linked with tenure security

The Policy Framework

During the transition period towards the market economy, the aspects of forest and pasture sector policies have been included in the general frame of the economy. The Government program has anticipated elaboration of sectorial policies for privatization of public properties of all sectors, aiming to a quick privatization of strategic sectors; while the environment policies in Albania are based on the sustainable conservation, development and use of natural resources. Forest policy, as part of that, is based on the following strategic actions: the gradual transfer of responsibilities for the management of natural resources to the local government; strengthening of public and civil society role on natural resources management; rehabilitation of forest and pasture areas, especially of those exposed to degradation or fragile ecosystems.

The developing policy framework , against which forest sector development takes place in Albania is firstly based upon the new constitutional order. Constitution of the RA, approved on October 21,1998, among others, asks for “wise use of forests, waters, pastures, based on sustainable development principle”, and mentions the right of each citizen to be informed about the situation of the environment and its protection.

The macro-economic framework¹ may broadly described by:

- Recognition of private property rights and the privatization of public property;
- Decentralization and the strengthening of the role and capacity of local government
- Transformation to a market (driven) economy
- Enhanced popular participation and support for the role of non-government organizations
- Rationalization of the role of government, institutional reform and increased effectiveness and efficiency in the use of governmental resources

More specifically, the forest sector’s policy frame work consist of the strategy for development of forest sector, approved by the Council of Ministries on May 2004, stipulates a set of main goals for forest sector development:

- Maintaining the integrity of forest and pastures, biodiversity and natural habitats;
- Management and development of forest in order to improve their production and ecological functions
- Transfer of forest in pasture in use and ownership of communes

Pursuant to the “main goals” the strategy calls for concrete political actions as:

- Reorganization of forest service
- Forest restitution
- Promote of participatory approaches and increased involvement of local communities and private sector

¹ MoAF (1999): The Government Strategy for Agricultural Development in Albania; p.9

- Enhancing the leading and managing capacities at the level of local government units and private partners and
- Organization of advisory forestry service .

Albania's international obligations and commitments influence the forest-related policy framework by being signatory party to a wide array of forest related multilateral environmental agreement. Among these are:

- "Ramsar Convention" dealing with the conservation of wetlands (Signed 1995, ratified 1996)
- "Bern Convention for protection of Flora and Wildlife Fauna of Natural Environment in Europe (signed 1995, ratified 1998)
- United Nations Framework on Climate Change (signed 1994, ratified 1995)
- United nations Convention on Biodiversity (accession in 1994)
- United nations Convention on Combating Desertification (accession in 1999)

The Legal Framework

Below the policy level, and within the general framework set by the 1998 Constitution, the legal framework provides a normative basis as well a regulatory instrument for putting policies, strategies and the goals into practice. The fundamental political, social, economic and institutional changes brought about during the transition process, necessitate also a legal reform process in the agricultural and forest sector. Given the special focus of this study context, it appears unfeasible to present the discussion of legal framework in the form of document –by-document analysis. Instead, a thematic –problem oriented – structure will be applied; addressing issues which related to –and impact on-land tenure issues in the forest sector. This approach is justified having in mind the dynamic of political reform processes in Albania- is subject to rapid and far reaching changes.

Gaps between law, policy and reality and their consequences

Translating post-communist Albania's declared commitments to a market economy, and greater democratization into action has exposed tensions over two broad questions related to property rights, namely the extent and speed at which central State ownership and control over resources is to be divested from the State and central government to lower level official and private actors, and the extent to which customary or traditional property frameworks are either to be adapted and incorporated or displaced by formal ones.

Land privatization

The very existence of different categories of land/forest ownership and resources tenure is a result of the transition process after collapse of the communist system, reversing nationalization of the means of production and recreating non-state land ownership. : Law No. 7501, dated 19.05.1991 "On land-classification of lands, privatization/distribution of rural lands, coincidence with land and tree ownership "

Thus far, land privatization has largely been confined to some 560,000 ha of agricultural land , swiftly distributed to about 354,000 village families between 1991-1993. State ownership

continues to prevail over virtually all the roughly 1.5M ha of forest and 420,000 ha of pasture land, with the exception of only about 6,000 ha of forest land and 23,610 ha pasture land --- restituted to former owners. While approximately 6% of forests are said to have formally been in private hands prior to 1945, this grossly understates actual customary and community sanctioned rights, which have to varying degrees been reestablished on the ground. Demands for restoring pre-1945 ownership and use rights, whether previously documented or not, have persisted, and have been widely reasserted *de facto*, particularly in Albania's north. This has been true of both for agricultural and forest/pasture land.

Agricultural land

In about half of Albania's villages, ex-coop land was distributed according to "old boundaries" based on pre-1945 claims, rather than in conformity with the legally stipulated per capita/no reference to old boundaries formula. This was the prevailing pattern followed in the north and in a smattering of villages elsewhere, particularly hilly or mountainous villages located in the center of the country. Being ancestral lands to which rights are generally honored by the community, people's sense of security about them is strong. Law No. 8312, dated 26.3.1998 "On undistributed agricultural land" considers as such, all lands registered as agricultural land, which are not distributed or are refused by families or individuals; it is reported that these lands would be about 120 thousand hectares. Part of these lands are converted naturally on forest or pasture, others are constantly being degraded because of their misuse.

Forest and pasture land

Since virtually all forest and pasture land is State-owned, rights are largely a matter of legal, administrative and contractual definition. Nominally, the lion's share of this land is directly under the administration and enforcement authority of the Ministry of Environment, Forest and Water Administration.

Communal forest and pasture areas adjacent to villages have suffered some of the worst overexploitation and degradation, particularly where rights are vaguely defined, where neither effective State nor community control or consensus about the distribution of rights exist and where defense of either formal or customary rights against encroachment or challenge, is inadequate. This last issue has been addressed in the 140 communes covered by the World Bank-Project (1996-2004)-supported Communal Forest and Pasture Management (CFPM) projects through the hammering out of agreements signed by heads of neighboring villages, and with the involvement of District Forest Service (DFS) and commune representatives. The following laws dealing with forest, pasture, wildlife, hunting and NTFP confuse the terms for forest and pasture transfer and user rights:

1. Law No. 7623, dated 13.10.1992 "On forests and forest police", as the main law for the sector was prepared at the beginning of transitional period and does not respond to today's developments of the forestry sector. Also, some disputes between the forest law and other laws, like the law on environment, tourism, minerals, etc., are apparent and need to be harmonized. This Law was replaced by the Law No 9385, May 4, 2005 with no clear definitions on the rights, ownership, and forest products sale
2. Law No. 7722, dated 15.6.1993 "On protection of natural medicinal, aetheric and tanipher plants" confirms that DGFP and its subordinate structures are in charge to take measures for the protection, propagation and management of these natural plants. But, the law does not consider the ownership and use rights over the communal and private forests and pastures.

3. Law No. 7875, dated 23.11.1994 “On protection of wildlife and hunting” states that the wildlife is a national asset, protected and managed by the state. The Same way as the law on medicinal plants, the law on hunting does not properly consider the ownership and use rights over the communal and private forests and pastures.

Protected areas and buffer zones, in the form of green belts around cities or employed to protect ecologically fragile or unique areas from certain types of development, resource extraction or uncontrolled access, present the challenge of balancing public interests with those of local property holders. Law 8906 “On Protected Areas” (6/6/2002), establishes a six-level grading system according to which levels of protection and restrictions to be imposed including the width of buffer zones, are calibrated. Environmental permits are generally required for any activity not explicitly permitted or prohibited by the law; forest areas within protected areas are “excluded from classification of forests for utilization” (Article 12-1) and private forest areas can only be used in accordance with the management plan devised for the area and approved by the Ministry of the Environment (Article 12-3). Voice is accorded to local property owners, communities and local authorities, both at the initial stages when inclusion of their areas is being proposed and after approval, in the drafting of management plans.

Cross-cutting issues surfacing in these complex tenure contexts include:

- Restrictions placed on private property use and how to compensate property holders for losses incurred due to outright expropriation or restrictions or partial losses of rights
- Management, administrative and legal complexities due to the mix of property types and uses involved and because such areas rarely coincide with administrative boundaries;
- Balancing the interests of local people with those of the public at large and outside private interests
- Servitudes and easements
- Elaborating effective enforcement/incentives / disincentives tools;

Decentralization, Devolution, and Divestment

While partially motivated by external prodding and the desire to come into compliance with the EU Charter, decentralization has also been embraced for eminently practical reasons. Attempts to enforce laws and regulations misaligned with local traditions and basic needs had proven disappointing, both in terms of enforcement and in terms of results². The thinking was that by shifting control, management and decision-making closer to the actual users and to the field of implementation, greater scope would exist for elaborating more locally appropriate solutions, thereby hopefully making compliance less of an issue, and reducing monitoring enforcement burdens on the central government

Communes

² Decentralization, particularly of forests and pastures and retarding erosion is part of the land administration strategy of Albania’s Poverty Reduction Strategy (K. Kelm. **Case Study: Albania** For: Regional Workshop on Land Issues In Central and Eastern Europe and the CIS Budapest, Hungary: April 3-6, 2002)

Devolution of rights and responsibilities over natural resource management to communes, currently the lowest rung of local government, has advanced substantially, particularly since 1995. In that year³, management and administrative responsibilities over all communal pasture lands (244,000 ha) were transferred to communes. Through and World Bank- USAID-Italian Swiss and Sweden governments assisted efforts between 1994-2005, communal forests and pastures covering 391,000 ha in 140 communes have come under communal pasture and forest management, with the ultimate goal being to bring 50% of forests (about 500,000 ha) and 60% of pastures (244,000 ha) under such arrangements by 2008. These arrangements accord communes management functions and empower them to assign in-use rights on a contractual basis to villages and users organized into associations. Law No. 8652, dated 31.7.2000 “On organisation and functioning of local government”, Law No. 8743, dated 22.2.2001 “On state immovable properties”, Law no. 8744, dated 22.2.2001 “On transfer of state public immovable properties to the local government”, Law No. 8752, dated 26.3.2001 “On creation and functioning of structures for land administration and protection” have created an good environment on decentralization. Work is now going on the inventorization of State properties local governments may request to have transferred to them. Once completed and once communes assume ownership their position and latitude as managers and stewards of natural resources is likely to be boosted.

Villages

Decentralization, as it has taken shape, has marginalized the role of villages as de jure arbiters over shared community resources, something that many decry as being at odds with deep-seated traditions and counterproductive from the point of view of optimal resource management. Lacking legal personality within the current local government framework, villages as such, are excluded from land ownership and any say, except in an advisory capacity, on how common village resources such as pastures should be used or allocated. Based on the last ten years experience, one very important lesson learnt is that the key policy issue is to consider *the village* as the basic unit for forest& pasture transfer as well as for their sustainable management and for income generation.

Forest and pasture users associations

One important element in sustainable forest management is the self-organizational of the population through creation users groups and associations enjoying legal person status, such as Communal Forest and Pasture Users Associations (CFPUAs) in communes level (there are 138 in national scale), Regional Federations representing the interest of the CFPUA in regional scale, and represented on national level by an umbrella organization of forest and pasture users. The National Forest and Pasture Users Association has the main objective to represent and address the interest of the members (regional federations) regarding sustainable communal forests and pastures management through coordination, advise and general support in the interests of the members at national level

Rights to sell timber and non-timber forest products

³ According to Decision No 700, dated 10.23.1995 "For the definition of boundaries of state pastures and meadows in administration of DGFP and local government for general use"

Neither communes nor users have any explicit rights to sell forestry products. Laws (8743, 8744) governing transfer of public lands to communes that is currently underway, restrict communes' role to that of proper management of the resources in accordance with provisions of management plan and under DFS supervision to serve the broad interest of the public.

At this point, income sources communes may derive are essentially restricted to fines, tariffs and licensing fees. Future sources might include rental or usufruct right fees for land acquired in ownership. However rights of transfer remain extremely circumscribed even under the terms set out in Law 8744 (On Transfer of State Public Properties to Local Governments). This Law and others before it have essentially been silent on the right of communes or those under usufruct tenure under communal forest and pasture arrangements to sell forest products. Management Plans also restrict themselves to technical details of how particular parcels should be preserved and developed.

Currently forest law no 9385, May 4, 2005 does not adequately address yet issues relating to transfer of usufruct right and ownership of state forest and market rights : "Forbids sale of uncut timber products from public forests (communal forests are public forests), and Ch 8 Art 38: Any trade in forest products not authorized by the forest service is subject to fines.

Recommendations

With a view to sustainable forest management, the government should consider setting up a special mountain development fund as part of its structural agricultural policies which would focus on support to poor and disadvantaged rural mountainous areas as is done throughout Europe. The Government of Albania could set up a special support program for the disadvantaged areas to support the transfer of forest and pasture resources to local communities for the whole country.

Forest and Pasture User Associations (FPUA) or other similar farmer associations be allowed to sell production, which exceeds the needs of their members to generate funds for association support and resource management investment.

FPUAs be registered as Associations of Mutual Collaboration with Economic Activity. This would allow them to develop a revenue surplus and not be taxed.

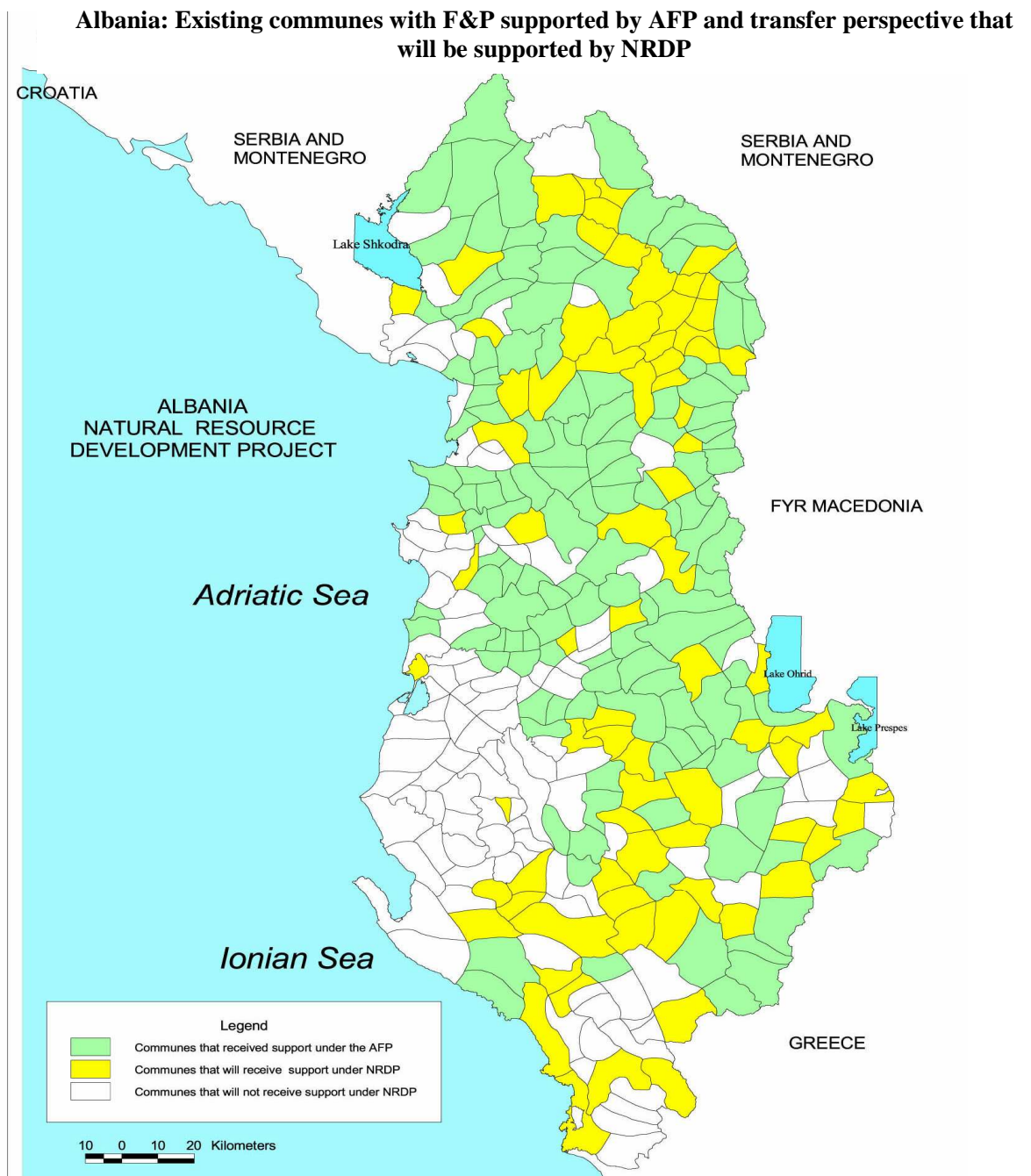
The Government should examine its current extension program and provide additional support in areas where it is determined that the support would be most effective.

The Government would assess the opportunities of supporting the development of small-scale processing enterprises in villages and rural areas. The Government would evaluate the green movement and its potential effect on Albania's forest product markets, determine certification criteria and procedure and assist local government and associations in the certification process if warranted.

A future vision

Taking these sorts of steps would move the entire participatory resource management model toward the following vision: a wide variety of local actors --- families, villages or associations formed on a variety of bases and for a variety of purposes --- exercising wide discretion over use and proceeds of their interactions with natural resources in their vicinity through enhanced property rights. Linkages among these actors are likely to be more networked than linear/hierarchical. Roles of local government or Forest Service will be re-oriented more toward

technical support, enforcement backup and coordination rather than direct management, control and the imposition of strict technical standards. Production and income generating activities of local people will be promoted and help to cover the overhead for umbrella associations representing local user interests to commune, regional and national government bodies and agencies, and generating income from services to members by providing marketing information, arranging for training, and contributing to the revenue base of local governments. While this vision is not likely to be realized in the immediate term, it is worth keeping in view as something to work toward.



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