

FOR THE ACCELERATION OF THE DECENTRALIZATION, LEGALIZATION AND MANAGEMENT OF THE COMMUNAL FORESTS AND PASTURES

(Summary of the study: “**Analysis of the Legal Framework on the Communal Forests and Pastures in Albania**”)

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In the framework of the governmental policies for the decentralization of the management of natural resources, the legalization of the early informality in the possession of forests and pastures near the villages, and for the EU integration, the process of the transfer of state owned forests and pastures under ownership or use of communes and municipalities, and traditional users - the village and the agricultural families – is ongoing. The process of transfer and management of communal forests and pastures by the commune/village and agricultural families is very beneficial and successful, from which will benefit the following:

- Agricultural families - which constitute around 54 % of the total population, of which, 71% are employed in the agricultural activity, including forests and pastures; these families will have many benefits by the transfer process: (i) economic benefits – because of the wood and non-wood products, feed for the livestock, and generate income for living, which will increase, by all the villagers that are interested in protection and improvement of their forests; (ii) social benefits - the villagers have traditionally been the possessors of forests and pastures near their village (even though informally), but now, their use by the village, families, users' associations, is being legalized; (iii) environmental benefits - being that the villagers are convinced that the forest and pasture belongs to them, and this is sanctioned on document, they become more sensitive towards the protection of natural resources and the entire environment, in order to have more direct and indirect economic and environmental benefits;
- Local government – gains more rights, and at the same time, more duties for the management of communal forests and pastures, by benefiting: (i) greater opportunities for the exercise of economic activities related to the communal forestry; (ii) opportunities to offer better services to their inhabitants, deriving from the ownership over communal forests and pastures;
- Forest Service – is relieved of some duties, because for the protection of the largest part of the forest and pasture area that is transferred, will be interested the local communities and governments themselves;
- The society as a whole, as a result of the: (i) improvement of communal forests and pastures by the agricultural families and communes themselves, apart from the economic benefits, will bring the land degradation to a halt and the improvement of environment; (ii) also, the expenses for the management of the these resources by the commune/village are lower than those incurred by the state forest service.

A series of legal acts, such as: the law on forests, on pastures, on public property, for their transfer, etc., has made possible the transfer process of the communal forests and pastures. The transfer process began in 1996, in cooperation between the district forest services (DFS) and the local government, with the technical and financial support of some international donors. There have been transferred 341,000 ha of forests and 93,000 ha of pastures, by including 138 communes, with 1,290 villages and 160,118 families. In these villages there have been established the forest and pasture commissions, and the communal forests and pastures associations, the regional federations, and the National Association. Thus, it has begun the most important aspect of the reform in forests and pastures.

In fact, the tradition of the common use of forests and pastures by the village or of certain lots by each family, is very ancient, since the times of the Code of Lekë Dukagjini, and continues in our days, a tradition which is also reflected in the transfer process. During this process, a good experience has been gained, and everywhere can be seen forests improved by the families that possess them; the management plans have begun to be implemented by the associations, financed by the Natural Resources Project Development and the Dutch Organization for Development (SNV); the attitude of the local governments and foresters towards the communal forests and pastures is changing. In the line of the forest service, the Ministry of Environment, Forests, and Water Administration is the authority in charge of leading and monitoring the transfer and management of the communal forests and pastures; in the districts are the DFS's. In the line of local governments, the process is led by the Ministry of Interior, and in a number of communes the communal foresters have been appointed.

Despite all the achievements, the pace of transfer has been slow, and the implementation has had shortcoming, because the process is not properly known by the participating actors, the boundaries between the communes, villages, users' forests and pastures are still not legally recognized, the users have no documents to prove their exclusive rights of use over the forest or pasture and these have not been registered in the immovable property registration offices, etc.

From the analysis of the current legal framework related to the property rights and the rights of use of communal forests and pastures, it can be concluded that there are shortcomings, gaps, overlapping of competencies or controversies that slow down the transfer process and the conduct of the reform in this sector. Among the main ones could be mentioned:

- There is a concentration of competencies in the state authorities even for matters that should belong to the local government, such as: the management and exploitation of the forests, for the removal from the forest and pasture fund, the change of the use of land, etc.;
- There is a mismatch and overlapping of the competencies between some laws on the administration and communal forest and pasture cadastre, on offences, collection of fees, environmental permits, penalties, and their collection;

- The rights of use are not complete and not clearly defined, especially for the management of the forests and pastures that are given in use of the village and families, and for users' associations; there is a lack of legal provisions on the regulations for the exploitation of forests and the sale of wood and non-wood products by the users and associations for the increase of their income; lack of provisions for the supply of the villagers with wood products and firewood or other products, for the encouragement of the increase of the value of wood and non-wood products from the communal forests and pastures through the processing and sale.
- There is a lack of the criteria for the transfer of forests and pastures from under use, into ownership of users (agricultural families), when they protect and manage them properly (for which there is a tradition throughout our country);
- The laws do not thoroughly deal with the relationship between the central and local governments, concerning the communal forests and pastures, between the local government units and the users (agricultural families and associations), or with the forest service, and the private owners; incentives and direct benefits that the users and their associations will have because of the good management of natural resources, and the facilitating conditions for the use of state forests by them for the poverty alleviation;
- According to law, the drafting of the management plans, the collection of forest products and the conduct of rehabilitating works in the communal forests and pastures has to be done by the licensed subjects, leaving aside the associations, villages, families, the communal forester, who possess the necessary potential for these activities, and need extra income to earn a living;
- The law foresees the lopping, grazing of the livestock and the scything in the communal forests (by the users) towards a payment, when traditionally, in many areas, it has never been paid for such uses;
- The users and the associations do not benefit compensations or income from the restrictions placed on them by the laws on national parks and protected areas, for the water and mineral resources, for the touristic areas and military zones in their territory;

In the support of the government decision to complete the communal forests and pastures transfer process within the first half of 2008, and for the full implementation of the program of measures drafted by the Ministry of Environment, Forests, and Water Administration for this purpose, it is proposed the improvement of the legal framework, as follows:

1. The communal forest and pasture sector should have a prioritized position in the national strategies. In the framework of the national program of forests and pastures, which should be drafted and approved as soon as possible by the superior authorities, there should be included the objectives for the communal forests and pastures transfer, and the strategy of the reforms

and the role of the state, local government and users (village, family, and association) in the management of their own forests and pastures.

2. It is proposed that the changes in the legal acts should include:
 - the transfer under the ownership of the commune or municipality of the forests and pastures within their jurisdiction, the legalization – recognition of the traditional property right for the real claimants and the actual users (village, clan, family, association), and providing them the legal documents and the registration in the Immovable Property Registration Office;
 - the right to manage the wildlife within them and other natural resources of the local character (water sources, local streams and reservoirs, stones, sand and gravel, fish, etc.);
 - the transfer of the relevant specialists, funds, necessary tools and equipment from the forest service to the communes, proportionately with the transferred area, as well as the cadastre, technical, and mapping documentation;
 - the right of the user (village, families, association) for the sale of the surplus products, and to exploit the state owned forests and pastures for products for sale, and generation of income for poverty alleviation, apart from the establishment of financial instruments and incentives for the support of the communal forests and pastures development, and other natural resources in the rural areas.
3. Distinction should be made in the legal acts between the forests and pastures that are managed by the commune for the exercise of their duties (after the fulfillment of the needs of their inhabitants), and the forests and pastures that are managed by the village, agricultural families, association. It is necessary the review of the criteria for the forests and pastures that should be transferred. The management plans should be drafted and implemented on village basis and their summaries prepared for the commune.
4. It is necessary the establishment and functioning as soon as possible of the forest extension service, especially for the communal forests, the training of the local government employees, communal foresters and users' associations, the conduct of studies and analysis of the results and experiences of transfer and management of the communal forests and pastures by the specialists of the forest service, local government, Faculty of Forest Sciences, and Environment and Forest Agencies, identification and dissemination of the best practices.
5. During the improvement of the legal acts it should be kept in mind the compatibility of different laws, considering them in their entirety and unity, the approach with the European legislation, and today's tendencies in the world for the transfer of the forests and properties in general from use to ownership.
6. Wide participation of interested institutions and persons, of local government representatives, especially users and their associations, in the discussions in public debates for the necessary

improvement and amendments in the legal acts, is a condition for success and for their implementation.

7. From the analysis of the legal framework on forests and pastures it results that it is necessary to make improvements in many legal and sub-legal acts and other amendments; so, it would be advisable and is proposed:
 - (i) the drafting of a **new law on the transfer under ownership and the management of the communal forests and pastures**; or:
 - (ii) the drafting of a **new law on forests**, with three main chapters: 1) the management of state owned forests under the forest service administration; 2) the management of forests under the ownership of communes or municipalities and traditional users (village, agricultural family, users' association); and 3) the management of private forests.