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Gender Issues in the Structuring of Albanian Land Markets:
Impacts of a Land Market Project

The privatization of social property is being attempted to greater or lesser degrees throughout Eastern Europe and the countries of the former Soviet Union. In one of these countries, Albania, there have been four programs for the privatization of agricultural land and housing units: (1) the distribution of the ex-cooperative agricultural land according to the Law on Land of August, 1991; (2) the distribution of ex-state farm land approved in November, 1992; (3) the privatization through sale of retail shops in 1991 and 1992, and of housing units in state constructed apartment buildings launched in 1993; and (4) the restitution of properties to their previous owners who had lost their properties under the previous regime. Each of these programs have assigned rights (property, usufruct, leases) over real property to people and households. How these rights are being assigned also influences who will control and have access to property in the future.

The Albanian Land Market Action Plan (1993) envisions a number of projects to follow the land distribution programs in order to create dynamic and environmentally sustainable land markets. These projects will help install a property registration system and develop new and effective land policies and institutions under the radically new conditions of private ownership of real property. One such project is the Land Market Project (LMP), funded by the Agency for International Development and implemented through the University of Wisconsin. The objectives of the LMP are: (1) assist in the creation of a property registration system for the country, including basic legislation and institutional organization; (2) develop and test procedures for creating property registration offices in three pilot districts and then extend these procedures to the rest of the country; and (3) assist in the development of new and effective land policies and management institutions. The purpose of this paper is to describe how the LMP is contributing and can contribute in the future to the operations of land markets so as to equally benefit men and women.

1. Privatization of ex-cooperative land and ex-state farm land

The first step in the land distribution program, the privatization of ex-cooperative land, has been undertaken as part of the re-structuring of land rights and the entire economic system which gathered steam in 1990 and was formalized with the passage of the Law on Land in 1991. In that law, land which had been organized into some 400 cooperatives (collectivized land which was owned prior to collectivization by mostly peasant farmers) was to be distributed among the 380,000 families which were resident on the cooperatives at the time of the passage of the law. The law further required that the land be divided on a per capita basis, i.e., the number of people living in a particular village was determined, and each person received a quota of land of differing qualities. These quotas were then accumulated within a household for the total amount of land of different qualities which was to be assigned to the household. The Village Land Distribution Commissions were in charge of this process, and had the responsibility of dividing the land among the households,

using this per capita procedure for deciding how much land corresponded to each household.

In about half of the villages where this procedure was followed, the District Land Distribution Commissions approved the Village Commissions distribution plans and issued tapi, or certificates of allotments (patents or titles indicating private ownership of the land). This titling process followed an initial stage of subdividing the land, discussing the subdivisions with the households of the village, preparing the documentation of these allotments and getting the families in the village to agree. The documentation of the distribution to each family includes the name of the household head, the area of each parcel awarded, the main land use category of each parcel, and the names of the neighboring owners. This information is transferred to the titles which are issued to each household, with the name of the household head placed on the certificate of allotment or title.

In the other villages, the per capita procedure has not been followed, or has been sufficiently at variance with the stipulations of the law so that the District Commissions have not approved the de facto distributions of the land. In most of these cases, the pre-cooperative owners of the land or their descendants have claimed and occupied the land, leaving without land the families which have moved into the villages since collectivization and have no ancestral claims. In these cases, no titles have been issued, even though the land has been subdivided and is being occupied and used by private families. The District Land Distribution Commissions continue to work with these villages, hoping that once the procedures and funding for the compensation of ex-owners are in place, getting the distributions more in accord with the law will be easier, thereby permitting the issuance of the certificates of allotment (titles).

The distribution of the ex-state farm land was approved in November of 1992 (Guidance of the Council of Ministers dated 23/November/1992, and the Decision of the Council of Ministers No. 452 of 17/October/1992), with procedures similar to those used for the distribution of ex-cooperative land. The state farms were formed either from re-claimed public land or from cooperatives themselves from the collectivization of privately owned land. For ex-state farm land which derived from cooperatives which graduated into being state farms, the procedures for distribution of the land are basically the same as for the ex-cooperatives (per capita quotas, property titles to household heads, eligibility limited to those people resident as of August, 1992). For ex-state farm land which was previously owned by the state, most certificates of allotments are being given as "in-use" rather than as property, meaning that the state formally retains ownership of the land. The managers of the ex-state farms are also permitted to participate in the distribution process, and are being leased land. The other major difference is that the workers on the state farms' payrolls as of the date of the decision to re-distribute the land are eligible for an allotment "to satisfy their subsistence needs", which in practice means that some titles are being given to individuals (women and men) who are not necessarily household heads, although the extent of this form of titling has to be verified.

In both of these programs for the privatization of agricultural land, it is illegal for the recipients of the land to sell it, and rentals are also discouraged.

Clearly the intent of these two programs has been to divide up the ex-cooperative and ex-state farm land among all those who lived on the cooperatives and worked on the state farms, and to give the members of eligible households rights to the land, even though the procedures used ended up with only the head of the household named on the property and "in use" titles (except for some titles on some state farms). In Albania, the household head is almost always the eldest man in the house. There are two main concerns with this arrangement, which derive from the fact that other members of the affected households who have legitimate rights to the land are not named on the titles:

(1) if the individual named on the title, the household head, decides to deal in the land (sell or rent or mortgage it), it may be legally possible to do so without notifying the other members of the family, thereby depriving them of the proceeds of the transaction as well as participation in the decision as to the wisdom of the deal.

(2) if the individual named on the title leaves the household, e.g. migrates to another city or country, during his absence the other members of the household may not have the legal right to rent or mortgage the land or otherwise participate in the land market, thereby depriving them of the means for making the land produce income for them.

2. Privatization of Housing Units

In the case of state constructed apartment buildings in urban areas, the households occupying them (mostly 1 and 2 bedroom apartments) can purchase the property at very low prices. They must record on the privatization sale contract the names of all adult (over 18 years of age) members of the family as of August 1, 1992. Only the household head, however, signs the contract, as is the case in the privatization of agricultural land. The contract also contains a description of the location of the apartment and its size in square meters, and a plan of the apartment and of the neighborhood of the building in which it is located (showing the streets and the location of the building).

This contract is signed by representatives of the Ministry of Construction and the household head, is notarized by the District Notary, and is then recorded in the District Hipoteca Office.

In contrast to the agricultural land privatization programs, these privatized housing units have no legal restrictions on their sale or rental. However, since only the household head signs the contract, concerns similar to those for agricultural land exist about how to protect the rights of the other household members.

3. The Land Market Project and Rights to Real Property

The Land Markets Project provides several mechanisms for improving the protection of the rights of the household members to land and housing units:

3.1 Legislation

One of the first actions of the LMP is the preparation of a Land Registration Act for creating a modern system for the registration of property rights to real property. The intention of this Act is to create an administrative system to record the

property rights created by the various privatization programs in this new property registration system, and to provide procedures for the continued definition and protection of these rights over time.

The draft Act, presently under review, contains various provisions for defining and defending the rights of various people to the same property:

(a) Household rights.

The Register for each parcel contains a space to record the "proprietor". The Act defines "proprietor" as the person(s) whose name is registered under the Act as the owner of the land...who may also represent his/her household/family members". The Law on Land as well as subsequent directives clearly have implied that the recipients of the certificates of allotment for the land should not be considered the fee simple owner of the land, but rather that the owner is the household collectively. The Act captures this notion in the definition of proprietor. Should the named "proprietor" be the representative the household, i.e., have received the land either from government or from a previous proprietor in a transaction whereby he was considered as the household head, then any transfer of the property to a new proprietor will require some proof that the named proprietor is acting as the representative of the household. Any member of the household can challenge the transaction, if attempted without the household head having secured some proof of the approval by members. Certainly procedures will have to be developed to provide this proof, as well as to change the name of the proprietor on the Register when he is no longer the representative of the household (through behavior damaging to the household, senility, or some other reason). The draft Act, however, does provide the legal basis for protecting the rights of other household members.

The Act's definition of proprietor is innovative in introducing this notion of household representative into formal law. While no modern and comprehensive study is available, there is evidence that this notion is part of the customary practices of Albanian families. The Kanun or Code of Lekë Dukagjini, collected and arranged by Shtjefën Greçov, (published by Gjonlekaj Publishing Company, N.Y., 1989) is considered the most complete collection of Albanian customary law.

Although compiled in the first decade of this century by a nationalist Catholic Priest, Shtjefën Gjeçov, and expressing many values and rules which critics in Albania have called "barbarous" (Ismail Kadare, Broken April, New York: New Amsterdam Books, 1990, p. 140, mostly in reference to blood feuds), this Kanun still expresses fundamental values of many Albanian people, and may be experiencing a resurgence as the Albanians search for a new political and social system. In field work in the northern mountains of Albania in 1991, an Italian anthropologist concluded that, despite the past 50 years of repression and suppression of it, "...the Kanun is still in force. Norms, verbal formulas, gestures, rituals

have been repeated in front of my eyes as they were described in the texts I knew [from the Kanun]." (p. 46 of Emmanuela Del Re and Franz Gustincich, Bread, Salt and Heart: The Kanun of Lek Dukagjini Among the People of the Albanian Mountains, Universita degli Studi de Bari, Lecce: Argo Publishing, 1993.

Pertaining to household decision making structure and rights to real property, the Kanun contains the following provisions:

Section IX, Article 20: "The Rights, Obligations and Duties of the Head of the House":

"According to the Kanun, the control of the house belongs to the eldest living under the roof of the house or to his first brother. If he does not possess those qualities which are required to fulfill this office properly, --then on the basis of common consent-- another member of the household is chosen, who is wiser, more intelligent and more careful."

Section IX, Article 24: "Rights of the Members of the Household"

"The members of the household have the right:

1) To remove the head of the house if they see that he is not working for the benefit of the house and is leading it to destruction;"

Emmanuela Del Re summarizes the meaning of family or fis in Albania as the cell of society, and not the individual. "According to the Kanun, the individuals who are part of the family do not have a civil, juridical and social personality... Individuals acquire and exercise their rights through the head of the family, who is the equivalent of the pater familias....The head of the family is the juridical representative of the whole extended family" (p.48). This patriarchal structure is strongly imbedded in Albanian culture, almost certainly strongest in the mountains, but still appears to retain its appeal even in the cities and coastal plains.

b) Collective ownership.

For those households and people who do not wish to define rights by the presumption of the representativeness of the household head, the draft Land Registration Act provides two other mechanisms for the recording of collective rights to land: joint ownership and ownership in common. While these concepts are of common law origin, and not frequently found in Civil Code jurisdictions (which is what Albanians are trying to re-create), informal discussions in Albania produced a decision that such concepts satisfy the need to provide in formal law what Albanians many times desired to accomplish in custom (see Sections 77-79 of the Act). The two concepts differ basically concerning what occurs when one of the joint or in common proprietors die; for joint ownership, the

interest of the deceased proprietor vests in the surviving proprietors jointly, while upon the death of a proprietor in common, his/her share in the property is administered as part of his/her estate.

The concept of marital property, where the law presumes that both spouses own property acquired during marriage unless otherwise specified, was not included in the Act. This decision was taken because of: (1) the obligatory nature of such legislation; (2) spouse ownership being at variance with the Albanian customary notions of family ownership; and (3) the challenge such a proposal would make of the patriarchal structure of households. With these difficulties such a proposal would almost certainly cause great delays in approval if not outright rejection of the Act by the People's Assembly. Moreover, the Act as drafted provides some important protections of intra-family rights to land. Joint and in common ownership provide the opportunity for two or more people to form collective rights to land when they wish. In addition, the definition of the household head as representative of the family, unless the people involved wish otherwise, extends the rights in property to the entire household and not only to the spouses, which would be the case for marital property proposals.

c) Power of Attorney

The second problem for households mentioned above can arise where an individual is recorded as the proprietor but then leaves the household (moves to another place and is inaccessible to the household for managing the land). To deal with this situation the draft Act includes provisions for the registered proprietor to confer a power of attorney to another person, through a simple application presented to the local Registrar. This power of attorney enables the holder to dispose of any interest in land. By making the procedure simple and cheap, the intention is to encourage the use of a power of attorney in cases where the registered proprietor will be absent from the household for an extended period of time.

d) Other legislative needs.

The LMP includes the intention to assist in the drafting of other legislation which will affect the operations of the land market, including:

-- the Land Tribunal Act to create a special tribunal for the resolution of conflicts over land, where the interpretation of the LRA's provisions will be tested and defined;

-- a Lease and Mortgage Act to define the rules for leasing and mortgaging of real property;

--a Law of Inheritance to define procedures for the passing of real property from one generation to another;

The Law of Inheritance will be especially important for assuring the equitable access to property of women and men, and will require careful preparation to take into account the possible gap between formal law (which presently assures the equal inheritance of male and female children) and customary practice (which traditionally has favored male children).

The difficult question is whether the draft Land Registration Act, the procedures which evolve from that Act, other legislation and what people believe or value, will function to adequately protect the rights of household members to land, rights which few Albanians would question in the abstract. The Act's definition of proprietor tries to formalize a part of customary law in order to protect those rights through formal law. If the custom and the formal legal provisions drafted to date function as designed, the problem of the male household head dealing in land (selling, mortgaging, leasing) to the detriment of other members of the household should be minimized.

The strong customary views held in Albania about the minimal legal rights of women, however, may operate to their detriment. In this sense, traditional views can have negative consequences. According to the Kanun, the son can be an heir, but not the daughter. If the children are all female, none inherit, but rather the property passes to the owner's nephews. Women and men individually have no legal rights, but only through their families. According to the Kanun, "A woman is known as a sack, made to endure as long as she lives in her husband's house." (Section XXIX). Emmanuela Del Re's study documents the continued existence of these views in the mountains of Albania. The efforts of the previous regime to emancipate women through improvement of educational opportunities, the modification of inheritance laws and through the liberalization of labor laws to permit women to work outside the home have had their effects. However, the extent to which traditional views govern despite formal laws which may contradict them is difficult to determine, and should be the subject of serious study.

3.2 Land Policy Development

The focus on legislation described above has to take into account the customs and beliefs of the people. But these customs and beliefs are not rigid and uniform, forever unchanging, despite the amazing strength of the Kanun. Change occurs and support for change which is necessary can emerge from the democratic policy definition process. The LMP contains a Land Policy Development Component, whose intent is to support this process in finding solutions to land problems. Concerning the exercise of rights over land within households, a specific policy monitoring effort is envisioned. The specific objectives are to: (1) develop evidence as to the likely consequences of the allotment policies, formal law and customs on the family exercise of ownership and use rights to real property, and (2) define policy and legal options which are needed to address the problems documented.

The first step in this monitoring effort is to determine how rights to land are distributed within households, who controls land and its

products, and what problems individual members perceive with these practices. A number of factors, cultural, legal and economic, influence a person's rights to property in practice. The following questions are examples of those that will be addressed in this component:

- _ How are land certificates being handed out? Who in the households is receiving them?
- _ Within households, what rights do individual members have to land? Do all adult members have access to land and rights to the products of their work?
- _ As households change, for example, when a child marries and establishes his/her own household, what rights to the family's land do individuals have? Or when one of the spouses dies, what rights do the other spouse and children have to the land? If a couple separate or divorce, what rights does each person have to the family's land?
- _ Do inheritance practices differ in urban areas? Do wives have rights to housing purchased or established with their husbands.
- _ What legal rights (e.g., inheritance and divorce laws) do women, as wives or daughters, have to land? Are cultural practices in conflict with legal provisions?
- _ Do women face more obstacles in the purchase or renting of land than their male counterparts?

Data will be gathered and analyzed, workshops and seminars organized concerning these questions to assist in the definition of problems which may exist, and in the process of defining solutions, some of which may be legislative, others policy or programmatic, and others educational.

4. Summary

In summary, then, the LMP proposes that various steps be taken to assure that the rights to land and housing units are equitably distributed within households:

--the draft Land Registration Act contains provisions defining "proprietor" as the representative of household, thereby inhibiting his options for dealing in the land or housing the detriment of the household;

--the draft LRA provides for joint proprietorship and proprietors in common for the definition of property rights of two or more people to the same land or housing unit, which require the participation of all proprietors in any property deal;

--the draft LRA provides for Powers of Attorney to facilitate the dealing in any property whose registered proprietor has left the household for an extended period of time;

--additional legislation will be drafted to protect the rights of the owners in the instances of leasing, mortgaging, and

inheritances, as well as to provide rapid and practical resolution to conflicts over rights to real property.

--a component of the LMP is the preparation of new land policies and programs, one of which deals with intra-household rights to land.