WOMEN AND INHERITANCE RIGHTS TO REAL ESTATE IN KOSOVO

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### Abbreviations

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<th>Description</th>
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<tr>
<td>AIFCSCO</td>
<td>Administrative Instruction on Fees on Products for Registering the Immovable Property Rights from the Municipal Cadastral Offices</td>
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<td>AIILC</td>
<td>Administrative Instruction on the Implementation of the Law on Cadastre</td>
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<td>AINF</td>
<td>Administrative Instruction on Notary Fees</td>
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<td>IPRR</td>
<td>Immovable Property Rights Register</td>
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<td>KCA</td>
<td>Kosovo Cadastral Agency</td>
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<tr>
<td>LF</td>
<td>Law on Family</td>
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<td>LI</td>
<td>Law on Inheritance</td>
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<tr>
<td>LNP</td>
<td>Law on Non (Out) – Contentious Procedures</td>
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<tr>
<td>LN</td>
<td>Law on Notary</td>
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<tr>
<td>LPRR</td>
<td>Law on Property and other Real Rights</td>
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<tr>
<td>MSO</td>
<td>Municipal Cadastral Office</td>
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<td>MCSO</td>
<td>Municipal Civil Status Office</td>
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Executive Summary

The purpose of this report is to investigate women’s access to real estate inheritance in Kosovo. Article 7 of the Kosovo Constitution and the subsequent legal framework\(^1\), recognises the equality of women and the equal partition of assets among inheritors. However, traditional customs that tend to prioritise male over female descendants access to real estate still exist. At present, there are no clear legal procedural rules to safeguard against giving preference to male descendants. This is in part due to overlapping jurisdictions between the notaries and the courts, and the lack of legal safeguards to ensure equitable division of real estate assets among heirs. These problems are compounded at the administrative level: municipalities lack professional and technical expertise; specifically, they lack a working and updated Central Civil Status Register to properly identify inheritors. Furthermore, women are often discouraged to assert or claim their inheritance rights, and many may be uninformed about their rights under the law. Due to several multi-layered and intra-instructional legislative gaps, this report suggests that the current legal system regarding women’s access to real estate inheritance is problematic. The report identifies specific legislative issues and offers recommendations to the appropriate institutions. These recommendations can help the notaries, the courts, Municipal Civil Registration Offices and other authorities, better clarify legal gaps that leave women vulnerable and, as a result, can strengthen their role as a safeguard for gender equality.

\(^1\) The Law on Inheritance, under the title “Equality in Inheritance”, establishes in its Article 3.1 that: “All physical persons under the same conditions are equal in inheritance”. 
1) Introduction

The purpose of this report is to address issues related to the inheritance rights of women to real estate in Kosovo. In the Spring of 2015, the EULEX Mobile Monitoring Team (MMT), within the Advisory Unit on Justice Matters (AUJM), conducted research that focused on the performance of the following judicial institutions: Kosovo courts, Kosovo notaries, and the Municipal Civil Status Offices (MCSO). EULEX also reviewed existing laws and customs in order to assess their impact on inheritance rights. Inheritance rights of women in Kosovo, in particular the discrepancies between the existing legal framework and practice, is a well-known issue, which many organisations have addressed in various reports and initiatives with most focusing on the cultural perceptions of society to this issue. Although some of these reports have pointed out certain legal constraints, MMT identified a lack of reporting on the performance of the judicial institutions and related services in this regard. Thus, building upon previous research, MMT aims to explore how, despite laws ensuring the equality of women in inheritance matters, problems still exist.

In order to investigate this, MMT conducted case study analysis on Kosovo courts and from information provided by Kosovo notaries and Municipal Civil Status Offices. Using this data, the report will describe the obstacles to formal rights in the legal framework by looking at inheritance legislation, as well as the registration of transactions with real estate. In particular, it will expose unclear provisions, along with legal gaps, which allow for the continuation of discriminatory practices against women who seek the right to inherit real estate. Furthermore, notaries in Kosovo have not been able to protect the rights of women inheritors. Within the notary system, many women renounce their right to inheritance, making safeguards for women inheritors in this institution vital. Throughout the report MMT will provide recommendations for improvement for the Kosovo institutions in order to adequately address this issue.

As Figure 1 below shows, Kosovo has the lowest percentage of real estate registered to women in the Balkan region.

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To a large extent, Kosovo inheritance customs still favour male over female descendants. Following the death of a father or a husband, the daughter/wife is often at risk of not receiving her rightful share of the estate, including real estate. Women who depend on their male relatives for economic security are especially vulnerable, and are at high risk of succumbing to familial pressure to forgo their inheritance rights and allow patrilineal succession of family assets.

This problem is accentuated by institutional and administrative issues. For instance, courts and notaries are both legally mandated to deal with inheritance cases, which creates confusion. Additionally, due to the lack of a country-wide, reliable Central Civil Status Register, Municipal Civil Status Offices do not always know how many family members exist in any given inheritance situation.

Legally, Article 7.2 of the Kosovo Constitution clearly prohibits discrimination of women. Moreover, Article 22 states that the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is explicitly incorporated into Kosovo's laws. However, despite legislative safeguards for women, the cultural tradition of showing preference to male heir(s) persists.
### Article 7.2 Kosovo Constitution

*The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life.*

### Article 22 Kosovo Constitution

**Direct Applicability of International Agreements and Instruments**

Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:

(6) Convention on the Elimination of All Forms of Discrimination Against Women;

(...)
2) Background

Many of the laws pertaining to women’s right of property ownership in Kosovo are new, the earliest dating back to 2003. Within Kosovo customs, defined in traditional rules such as the Kanun I Lekë Dukagjini, women were excluded from receiving the family’s inheritance as property followed the paternal line. Thus, transferring to women meant transferring outside of the lineage line. Moreover, the traditional understanding of women accepting their inheritance is often seen as bringing shame on a husband or an embarrassing public display of a lack of support for male relatives. Within this context, advances to gender equality have occurred, as women have been granted certain legal safeguards, and organisations have been working on projects focused on changing attitudes. Despite these improvements, traditional perceptions remain. With legal gaps and unclear provisions, these attitudes are reflected in de facto inheritance proceedings.

Another important contextual understanding is the low economic independence of women in Kosovo. The number of women who work in Kosovo is one of the lowest across Europe, thus making these women reliant on family for their wellbeing. This dependence coupled with cultural traditions can be detrimental to women who face familial pressure to renounce their inheritance. Understanding these cultural and economic factors help to explain the high levels of renunciations by women detailed in this report.

3) Methodology: Data Collection

The MMT team collected data from the Court of Appeal’s case files, as well as information kept by the notaries.

**Court of Appeals:**

In the Spring of 2015, MMT conducted field research by collecting the Court of Appeal’s case file lists and details of inheritance rights related cases, in which women were a party in 2013 and 2014. The First Instance Courts were unable to provide the relevant data as this would have required extensive manual search of the registry books which was not feasible for this report. Therefore, the MMT analysis has focused on 290 cases extracted from the Case Management Information System (CMIS) at the Court of Appeals (CoA).

According to the information received by the Court of Appeals, only 6.8% of the total civil appeals (290 out of 4,265) were initiated by women appellants. The majority of these claims (88% of the 290) included a male co-claimant and co-respondents. Only 12% (35 cases) had “women only” as claimants.

**Notaries:**

In May 2012, the Law on Notary took effect, transferring registration and verification of property contracts, as well as inheritance procedures, to the Notaries. This development provided a better opportunity to obtain more precise data as the notary books are generally more accurate and detailed than court registries, especially since some of the notaries keep electronic databases, which the MMT was able to access.

Upon a request for information elaborated by the Kosovo Chamber of Notaries (KCN), a questionnaire was distributed among all 74 notaries in Kosovo during the beginning of March 2015. On 21 April 2015, KCN submitted a report (Annex I) to the MMT based upon the responses of 19 notaries (25% of total number of notaries) from different parts of Kosovo. This focused on women’s participation in four main legal acts and deeds which notaries are authorised to

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8 On the need to limit the search criteria within the database, the study focused mainly on “Obstruction of possession” and “Verification of ownership” civil appeals filed by women to protect their property rights. Other civil and criminal cases related to real estate were disregarded, taking into consideration the low number.

9 The CMIS database does not reflect every case registered and its procedural stages, being still under construction. 142 cases were on verification of ownership and 148 on obstruction of possession matters.

10 A general electronic database for all Kosovo notary system was still under implementation in February 2016.
certify, namely:

a) Sale Contracts with Woman Beneficiary  
b) Inheritance Decision with Woman Beneficiary  
c) Renunciation to Hereditary Rights by Women  
d) Contracts on Gifts by Women

The data gathered highlights women’s participation in notary transactions regarding inheritance. Although this data contains information from notaries across Kosovo, it is still important to note that not every court or notary complied with the MMT request and therefore the research has limitations. However, despite this, the data gathered points to the same legislative issues and thus provides an insight into the problem areas.

The information collected covers a period of almost three years (May 2012 to March 2015), and the findings are reflected in the following table:

<table>
<thead>
<tr>
<th>NOTARY11</th>
<th>Sale contracts</th>
<th>Inheritance decision</th>
<th>Renunciation to hereditary rights</th>
<th>Contracts on gift by women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notary A, Istog</td>
<td>30</td>
<td>45</td>
<td>102</td>
<td></td>
</tr>
<tr>
<td>Notary B, Shtime</td>
<td>55</td>
<td>27</td>
<td>111</td>
<td>18</td>
</tr>
<tr>
<td>Notary C, Gjilan</td>
<td>11 out of 163</td>
<td>10 out of 30</td>
<td>20 out of 30</td>
<td>52 (1 with a female beneficiary)</td>
</tr>
<tr>
<td>Notary D, Mitrovicë</td>
<td>7</td>
<td>5</td>
<td>37</td>
<td></td>
</tr>
<tr>
<td>Notary E, Prishtinë</td>
<td>203</td>
<td>13</td>
<td>27</td>
<td></td>
</tr>
<tr>
<td>Notary F, Prizren</td>
<td>29</td>
<td>15 (19 women in total)</td>
<td>45 (97 women in total)</td>
<td></td>
</tr>
<tr>
<td>Notary G, Klinë</td>
<td>12</td>
<td>8</td>
<td>19 (3 favored female)</td>
<td></td>
</tr>
<tr>
<td>Notary H, Viti</td>
<td>9</td>
<td>4</td>
<td>21</td>
<td>2</td>
</tr>
<tr>
<td>Notary I, Suharekë</td>
<td>16</td>
<td>25 (women)</td>
<td>238</td>
<td></td>
</tr>
<tr>
<td>Notary J, Prizren</td>
<td>75 (49 seller 26 buyer)</td>
<td>52 (women)</td>
<td>80 (women)</td>
<td>1</td>
</tr>
<tr>
<td>Notary K, Kacanik</td>
<td>12</td>
<td>4</td>
<td>none</td>
<td></td>
</tr>
<tr>
<td>Notary L, Prizren</td>
<td>16</td>
<td>16</td>
<td>71</td>
<td>6</td>
</tr>
<tr>
<td>Notary M, Prishtinë</td>
<td>60</td>
<td>18</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Notary N, Ferizaj</td>
<td>13 out of 202</td>
<td>21 out of 48</td>
<td>27 out of 48</td>
<td></td>
</tr>
<tr>
<td>Notary O, Kamenica</td>
<td>57 (35 seller 22 buyer)</td>
<td>18</td>
<td>44</td>
<td></td>
</tr>
<tr>
<td>Notary P, Prizren</td>
<td>12 (8 seller 4 buyer)</td>
<td>36</td>
<td>67</td>
<td>15</td>
</tr>
<tr>
<td>Notary Q, Suhareka</td>
<td>5 out of 37</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notary R, Viti</td>
<td>18 out of 154</td>
<td>17 out of 77</td>
<td>60 out of 77</td>
<td>15</td>
</tr>
<tr>
<td>Notary S, Prizren</td>
<td>42</td>
<td>33</td>
<td>24</td>
<td></td>
</tr>
</tbody>
</table>

11 Notaries are ordered as provided by the Notary Chamber. The complete communication is Annex I.
4) Legal Framework: Obstacles to Formal Rights

MMT noted that some of the provisions in Kosovo’s legal framework listed below, which are related to inheritance and registration of real estate transactions, expose gaps in the legislation which allows for the continuation of discriminatory practices against women who seek their real estate rights. In particular, the following pieces of problematic legislation were observed:

A) Inheritance Legislation

Agreements on Separation of Estate:

Article 172 of the LNP allows the inheritors to freely decide on how to divide the estate among themselves. In the context of Kosovo tradition, this can easily allow the possibility for division of estate that disadvantages the women heirs.

Renunciations:

Several reports and organisations have observed that families may subject women to pressure when it comes to questions of access to real estate. In particular, there are complaints that women are forced to renounce their inheritance rights in favour of males as tradition dictates. This is confirmed by the data gathered by MMT as renunciations to inheritance by women are among the most commonly certified notarial acts/deeds (Annex I). The complexities involved with the legal requirements for renunciation are explored below.

Article 130 of the LI allows the inheritor to renounce the inheritance. As a safeguard the renunciation cannot be done prior to the moment of death when the inheritance proceedings begin. Furthermore, it shall be signed and this signature shall be verified by “the competent body”, which is not clearly named nor defined.

Unfortunately, the new Law on Gender Equality from 2015, which replaced the Law on Gender Equality from 2004, has further omitted a safeguard given to women. The Law on Gender Equality in Article 16 paragraph 13 seemed to pose another requirement for the renunciation: inheritors could have renounced their share after the “registration” of their inherited real estate. Although this provision could have ensured official documentation stating what the women legally have the right to inherit, the meaning of “registration” was unclear and not explicitly

foreseen in the LNP. However, the new Law on Gender Equality does not even provide this weak safeguard, and instead has only established protection mechanisms in labour and educational relations. Therefore, the previous protection has been lost, as has the opportunity to have enhanced further protection for gender equality.

**Article 164 paragraph 5 and Article 165 LNP** allows for a verbal declaration before an authorised person when the inheritor is incapable of signing the renunciation declaration. However, it is not clear what is meant by “inability” in this provision and in which cases a signature is not needed. This uncertainty could lead to abuse of the provision in cases which do not qualify for verbal declarations. As a result, further safeguards are needed.

**Article 22 paragraph 7 of the Administrative Instruction on Notary Fees (AINF)** regulates the notary fee for renunciations separately from the inheritance procedure. The wording of this provision could be interpreted as allowing inheritors to renounce prior to the moment of death and thus may need to be harmonised with Article 13 of the LNP. MMT’s research found no prior-to-death-renunciation due to the right to privacy of the Notary clients. Regardless, as there is no provision in the LN prohibiting prior-to-death renunciations, so in theory renunciations could occur at the Notary offices at any moment. The law should further clarify and limit this provision.

**Recommendation:**

*Address the issue of renunciations to inheritance rights by women heirs. In order to limit renunciations and make parties carefully consider whether the renunciation act is adequate, imposing heavier taxes or notary fees on such an act should be considered. Some stakeholders and women's rights NGOs have even suggested the prohibition of such a renunciation, temporary or permanently. However, the right to renounce should not limited in cases which would bring financial burden to women heirs. For instance, in cases where there are more debts than assets, it would be fair to share the burden in equal parts. Unfortunately, this is not always granted by the current system. Moreover, even if a woman heir is granted the right to inherit, the family could transfer her share to male relatives afterwards by drafting a gift document. Therefore, a heavier tax gift contracts among relatives or co-heirs, regardless of their gender, could be considered to hinder unfair acts of renunciations.*

**Overlapping Jurisdiction of the Notary and the Courts:**

As noted above, the Law on Kosovo Notaries came into effect in May 2012. According to this law, notaries are legally authorised to authenticate and verify non-contentious inheritance matters. ¹³

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¹³ Article 29 paragraph 1.4 of the Law on Notary (LN) reads: Notary functions

The notary functions are:

(…)

1.4. To deal with all non-contentious inheritance proceedings;
However, the Law on Inheritance (LI) and the Law on Non-Contested Procedure (LNP) have not yet been amended or harmonised as foreseen in Article 76 paragraph 10 of the Law on Notary (LN). **This has created a legal misalignment where the courts and the notaries both have jurisdiction with regard to non-contested inheritance procedures.** As a result of this unclear legal procedure, some courts do not consider uncontested inheritance matters, whilst others do. Further, regarding the notaries, some may show reluctance to process these types of claims, instead referring these cases to the court. However, it is also important to note that notaries are paid per transaction verified. Therefore, it is highly unlikely that all notaries will discontinue issuing inheritance decisions despite the overlapping jurisdiction. Although in theory the notaries should act as a safeguard, often this responsibility is taken up depending on the individual and not guaranteed. This leads to the possibility that certain notaries’ inheritance procedure transactions could occur without appropriate questioning and verification of intent.

Given the absence of clear procedural rules, it is difficult to accelerate the resolution of inheritance procedures. These procedural questions typically delay or even disregard the review of women’s real estate rights, which negatively impacts their economic status.

**Recommendation:**
The Government should amend the Law on Inheritance and the Law on Non Contested Procedures, as the Law on Notary foresees, in order to specify the new role of notaries authorised to deal with inheritance procedures and to avoid overlapping jurisdictions. It is also recommended to specify, distribute and clearly separate the competencies or attributions of both the notaries and the courts with regard to inheritance procedures.

**Identifying Inheritors:**
The Death Testimony is the legal document that identifies potential heirs and is therefore essential for legally initiating any inheritance procedure. This document is produced by the Municipal Civil Status Office (MCSO). In order to obtain a Death Testimony, a family member must present the following documents to the MCSOs, according to Article 137 LNP:

1. ID of the person/family member requesting a Death Testimony,
2. Medical Death Certificate of the deceased, if this exists,
3. Birth Certificate of each one of the heirs listed by the requestor, including their relation to the deceased (Article 136 (d) LNP),

4. Other relatives which can be summoned by the Law in Inheritance, and also other persons who have rights to inheritance based on the testament (Article 136 (e) LNP) [therefore, the existence of a testament is also to be stated by the requestor of the Death Testimony], and

5. Assets subject to inheritance procedures must be listed, including real estate, and supported by proof of ownership (cadastre transcript etc.)

Next, the MCSO completes the Death Testimony according to the statement of the requestor and the supporting documents presented which is then stamped, copied for the files and given to the requestor. The requestor can then take it to a notary or to a court in order to claim or launch the inheritance procedure accordingly. The information provided by the requestor is typically not verified, nor is the existence of additional (women) heirs routinely explored as there is no legal requirement to do so, and no civil servant performs such verification afterwards.

It has been claimed by several reports, and verified by MMT\textsuperscript{17}, that women are frequently excluded from the Death Testimony by their families when requesting from the MCSO, thus making it impossible to realise their inheritance rights. According to the law, the MCSO shall ex officio send the Death Testimony to the “hereditary court”\textsuperscript{18} (which is now the Basic Court or the notaries). However, in practice this has not occurred. In an optimal system, the MCSO would be able to verify the data concerning family members and the deceased’s relatives through the Central Civil Status Register. However, as the electronic Central Civil Status Register is not yet complete and functional, and the administrative capabilities of the MCSO are quite weak, it cannot be verified whether the requestor is currently fulfilling the legal requirement to list all known family members of the deceased.

\textsuperscript{17} Confirmed in a meeting with the head of MOCS in Lipjan/Lipljan held on 5\textsuperscript{th} August 2015.

\textsuperscript{18} Article 133 of the LNP; it does not take into account the current Laws on Courts and on Notaries. The “hereditary court” at the moment would be, as stated, the Basic Court or, in non-contested cases, also the Notary.
**Recommendation:**
The MCSO should identify other public bodies that could assist it with regard to the identification of inheritors.

- As the local members of the Kosovo Police, such as community police units, have the advantage of mobility and familiarity within the society, they could potentially assist the MCSO.
- Procedures could be established where the MCSO requests the police to visit the residence of the deceased and the requestor in order to verify if there are more family members than those stated in the Death Testimony. In the case where the police identify a legal heir of the deceased that is not mentioned in the Death Testimony, prosecutors can rapidly be informed and investigations on false statements can be initiated (as this is contrary to Article 158 of the Criminal Code of Kosovo making it a serious offence). By this time, the MCSO would have already issued the Death Testimony and it is therefore important to create a mechanism to ensure that the courts and notaries are informed of its inaccuracy.
- The establishment of a central database for Notaries is ongoing and the estimated timeline for this project was for May 2015, however at the moment it is still not completely operative (see footnote 14). This could be a suitable channel to alert the Notaries in order to delay or verify the procedures regarding the deceased persons.
- The civil court or its section on inheritance procedures should be notified by the prosecution and rapidly note in the registry that investigations are ongoing. This suggestion is made as a temporary solution. However, it is clear that the ongoing advances in the electronic Central Civil Status Register (CCSR) will also have a positive impact on the identification of inheritors.
- As the CCSR gets more reliable, the routines of the MCSO could be amended accordingly. The possibility for the inheritors to take an oath when providing information for the Death Testimony can also be explored. This is not foreseen in the LNP but applies in some EU member states. Such a provision would make the perpetrators guilty of false statement under oath with increased punishment should they seek to cheat legitimate inheritors out of their lawful rights in order to increase their own share.

**The Inventory and Evaluation of Inheritance:**
Excerpt in the case of a contested inheritance requiring the participation of an expert, the inventory and value estimation of assets is done by the inheritors themselves and only verified by the court/notary. Due to the unclear rules and arbitrary practices regarding the estimation of the value of inheritance\(^\text{19}\), including real estate, women are in risk of being cheated out of their inheritance by an incorrect estimation of the net value of their shares. The LNP is thus missing safeguards needed to prevent the inheritors from hiding or undervaluing properties. Currently the only requirement is the presence of two adult citizens as witnesses to the inventory done by “the competent commune service or court official.”\(^\text{20}\) However, it is not specified that witnesses cannot be participants in the hereditary procedure itself creating possibilities for obvious conflict of interest situations.

\(^{19}\) In European legislations, commonly there is an estimative cadastral-official value assigned for each real estate, which is taken into account in non-contested inheritance procedures, for example for the calculation of the taxes to be paid.

\(^{20}\) Article 141 paragraph 3 LNP.
Article 40 paragraph 4 of the LN establishes that for Notary Deeds a witness cannot be a person with an interest in the transaction and/or a relationship with a party to the deed or likely to benefit from the deed. Although this provides some safeguards against biased witnesses and could work as an example for the LNP, it is not clear how the notary can verify the relationship the witness has with the parties.

**Recommendation:**

*Ensure fair, non-discriminatory division of the inheritance.*

*In order to assure that no agreement against the will of any inheritor is accepted, the following recommendations are given:*

- The criteria for the agreement must be specified by the law, providing safeguards to the fair division among heirs regardless of their gender.
- Define a time frame to reach an agreement in order to ensure that all rightful inheritors have been identified and all property has been registered.
- Specify that all inheritors need to sign the agreement before the court or the notary, thus enabling the verification/analysis of their capacity and willingness.
B) Registration of Transactions with Real Estate

Registration of Joint Property

Any property acquired by spouses in the course of a marriage is considered joint property, even if it is not registered to both in the IPRR. However, in any further transaction concerning immovable property, the data in the registry serves as a basis for any discussion of contractual rights. Should the spouse not be appropriately registered, this could lead to circumvention of the spouses’ rights. In particular, this concerns decisions with regard to transactions and shares of revenue following the resale of property. Further, Article 36 of the Law on Property and other Real Rights (LPRR) establishes the requirements for a valid transaction of immovable property rights, which, at the moment, is only the will of “the transferor”. As of 4 March 2016, an Administrative Instruction on Special Measures for Registration of Joint Immovable Property on Behalf of Both Spouses, binds all central and local institutions, as well as all public authorities (Article 2), to “apply temporary special measures for the purpose of increasing the number of women registered as joint owners” (Article 4). However, as the implementation of this Administrative Instruction is yet to be seen, MMT is unable to assess whether this is sufficient action to ensure joint registration.

It is important that both spouses’ names are registered, and several projects have recently promoted this common registration in Kosovo. In addition, joint registration would most likely also facilitate the widow’s position in the inheritance procedure when claiming her rights against other relatives of the deceased.

Recommendation:
Highlight the right of both spouses to decide over the cohabitation and promote women’s right to participate in decisions over the property transactions of the family. As Article 36 LPRR does not do enough to ensure that the woman is included, it could be amended to better guarantee this. The amendment could consist in requiring the participation of both spouses in the transactions in case of marriage or cohabitation, despite the fact that the formal registered owner of the property or properties is only the husband.

Registration in Cadastre

The Kosovo Cadastral Agency (KCA) has the overall supervision of cadastral activities and ensures that the Municipal Cadastral Office (MSO) is provided with the training needed to perform its

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21 Article 47 and 50 of the LF.
22 Administrative Instruction (GRK) No. 03/2016 on Special Measures for Registration of Joint Immovable Property on Behalf of Both Spouses.
23 USAID Kosovo property Rights Program; $8,343,070 which objective 3 (of 4) is to “Enhance Women’s Rights to Use Property in Practice”; IPA “Support to Civil Code and Property Rights” has also made focus on land tenure with gender approach; The UN has implemented the “Women’s Property Rights in Kosovo: “Do not remain silent!”” project, OSCE has had several projects such as an “Information Guide on Women and Men’s Access to Property and Housing Rights in Kosovo”.

Currently, there seems to be no disciplinary measures in place for officials of the MSO who do not register both spouses as foreseen by the law. Although the Cadastral Agencies are usually bound by the decisions of the courts or the public notaries, they should ideally function as “quality control”. They could do so by ensuring the registration of the names of both spouses wherever possible and whenever this possibility is overlooked by the courts or the notaries.

**Recommendation:**

Ameliorate the Cadastral Administration in order to enhance the registration of properties in the name of both spouses/women. The KCA must comply with training needs, including seminars on the Law on Gender Equality and the Law on Family, in order to make it clear to MSO officials that the realisation of the rights of women is important. To assure that the CSOs comply with the provisions, the KCA should conduct random checks and monitoring practices and identify problematic areas. The administrative instruction for the MSO should be amended so that they are required to verify through the Central Civil Status Register if a person applying for registration of property ownership is married and if so, ensure that the spouse’s name is also registered as foreseen in Article 47 of the LF. Likewise, the AIILC should be harmonised with Article 47 of the LF: “Notes of Owner” should include civil status and name of eventual spouse (see Article 5 paragraph 2). To further spread the knowledge about the provisions in Article 47 and 50 of the LF among the citizens, the officials should also adopt the practice of asking the applicant about his/her civil status.

**Fees and Taxes**

One administrative obstacle that could be easily removed is the practice, detected in several municipalities, of charging the transaction tax twice if spouses choose to have both names in the IPRR. For example, Article 24 paragraph 3 of the Regulation on Taxes on Real Estate Transactions in the Podujevë/Podujevo Municipality states that each buyer must pay a transaction tax separately. Similarly, Article 4 paragraph 1 of the Rules for Fees, Municipal Fees and Fines of the Prishtinë/Priština Municipality states that each buyer will be separately charged with a transaction tax per unit in a joint contract. These provisions could be seen as encouragement to couples not to register both spouses as owners as this will be more expensive. A practical solution would be to have the tax for the real estate divided in two (each spouse pays half of the tax).

Regarding the fees for cadastral services rendered by the MSOs, there is an Administrative Instruction from April 2014\(^25\) that sets the tax levels and thus does not allow the municipalities to set differing fees. However, MMT’s research into the municipal regulations has found that this administrative instruction is not applied. The newest Administrative Instruction from March 2016, further declares that if couples have ensured joint registration, they can be exempt from the

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\(^{24}\) Article 4 of the Law on Cadaster.

registration fee set by Article 5 of the Administrative Instruction No. 08/2014 on Fees for Services for Registering the Immovable Property Rights from Municipal Cadastral Offices. As stated above, the MMT is not able to yet access the implementation of this new regulation.

Recommendation:
The Ministry for Local Self-Governance should harmonise the Municipal Regulations on taxes and fees. It must be ensured that couples who buy and register a house in the name of both spouses are not charged higher fees than in the case when only one name is registered. Likewise, the transaction tax should be charged only once per transaction and not per buyer. All municipal regulations on taxes and fees must be harmonised Kosovo-wide, possibly through the Ministry for Local Self-Governance instruction.
5) Lack of Protection of Women’s Real Estate Inheritance Rights by Kosovo Notary Institutions

The main concern identified by MMT is the predominance of renunciation to inheritance rights acts by women, particularly in rural areas. The data gathered for this report shows that in the vast majority of inheritance procedures there were women as potential inheritors. However, these women were declared inheritors in a low percentage of cases (in general under 20%). In the rest of the cases the inheritance was renounced by the women heirs. This raises into question the role of the notary as a safeguard of legality, fairness and gender equity. It is difficult to determine whether all women renouncing their rights were fully informed by the notary of their legal rights or the value of the renunciation. Furthermore, this report cannot conclude whether the notary took all the necessary safeguards in accordance with the customary law to ensure and respect that the decisions of the women were their own and not due to familial pressure. In an ideal situation of gender equality, renunciation to inheritance rights would be limited, regardless of the gender of the heirs, and usually only as a result of cases where more debts than assets would be inherited. However, in most cases of renunciations by women this is not the case. Although notaries are in an excellent position to limit the impact of these renunciations, at times it is not clear if they are doing this.

Although MMT gathered new data that sheds light on the reality of the situation over women’s inheritance rights to real estate, the information gathered by the 19 notaries Kosovo wide also contained problems. Firstly, some Notaries did not complete information. Many of the Notaries did not give the overall number of legal acts compared with the number of acts in which women take part. Without the disaggregated data it is hard to understand the full picture. Secondly, some notaries arguably lacked impartiality. For example, most of the data shows that women renounce their inheritance in favour of male family members. However, while compiling data for this report, one notary insisted on highlighting that in some cases women renounced their inheritance rights in favour of sisters and other women heirs. Although this may be true, the number of cases in which this occurs is not fully representative and thus brings into question the understanding some notaries may have of their role as protectors of women’s inheritance rights.

Fortunately, a few notary offices provided data which was complete and aggregated, including the overall numbers needed to facilitate comparison with the amount of women beneficiaries. According to this data which underlines the current state of women’s access to real estate inheritance, women benefit only in around 15% of the total number of property transactions. In

26 Annex I.
rural areas this percentage is even lower. For example, only 6% of property sales (11 out of 163 contracts) benefited women in Notary Office C, Gjilan/Gnjilane. The figures obtained from the notaries, in any case, perfectly match both the percentages of civil cases initiated by women appellants and the percentage of women which are property owners, according to Cadastre.

Thus, despite the lack of complete data for all Notaries in Kosovo, the evidence found by MMT clearly highlights the lack of protection of women have to inheriting real estate by Kosovo notaries.
6) Conclusions

This report has explored women’s access to inherited real estate in Kosovo. Using information provided by notaries and the courts, along with case study analysis, this report has uncovered several multi-layered and intra-institutional legislative gaps, including a lack of clear procedural rules in the legal framework.

Firstly, within the Inheritance Legislation, there is overlapping jurisdiction on non-contested inheritance cases between the notaries and the courts. Further, in the current legal system, the MCSO is unable to verify whether women are left out of the Death Testimony and the LNP does not provide enough safeguards to ensure that the inventory, as well as the division, of inheritance does not disadvantage women inheritors.

Secondly, as highlighted in the data gathered for this report, renunciations by women is a major issue and the legislation that deals with this matter is often unclear and lacking safeguards.

In addition, if women are not adequately registered to immovable property, they may not have the same contractual rights as their husbands and institutions such as the Kosovo Cadastral Agency are currently not ensuring that both spouses are registered.

Lastly, there are fees and taxes regarding transactions in some notaries and CSOs that can lead to less registered women. MMT’s research into notaries highlights the lack of protection these offices provide to the inheritance rights of women, despite the numerous legal acts, such as renunciations, that they officiate.

In conclusion, the current legislative system regarding women’s access to inheritance of real estate is weak and problematic. Although at first glance it seems to satisfy European equality standards, it exists within a cultural context where equal inheritance rights for women is not (always) the norm.

As a result, the current legislative framework is insufficient to tackle traditional practices and there is a need for clearer and meticulous legislation and procedural rules. According to this analysis, amendments to laws are needed to clear gaps, harmonise rules and act as a precaution to circumstances where women’s legal rights may be violated. This will require dedicated effort by the Kosovo Government, the Ministry of Justice, the notaries and the courts to ensure that the possibilities of circumventing the law are reduced to a minimum, thus providing women real (not formal) legal guarantees. The different institutions involved, such as the Cadastre, the notaries and the MCSO, should act as checks and balances in order to ensure that the inheritance information is accurate and there is an equal partition among inheritors. All stakeholders involved in promoting the rights of women must continue to pay close attention to this issue, as ensuring that the legal system protects the rights of its citizens is necessary for a strong state. The recommendations identified in this report will help the Kosovo Government, along with the international community, develop
greater rule of law and protection of rights for all people.
Recommendations:

1. **The Government should amend the Law on Inheritance and the Law on Non Contested Procedures**, as the Law on Notary foresees, in order to specify the new role of notaries authorised to deal with inheritance procedures and to avoid overlapping jurisdictions.
   - It is also recommended to specify, distribute and clearly separate the competencies or attributions of both the notaries and the courts with regard to inheritance procedures.

2. **Identify other public bodies that could assist the MCSO with regard to the identification of inheritors.**
   - As local members of the Kosovo Police, such as community police units, have the advantage of mobility and familiarity within the society in their areas of responsibility, they could potentially assist the MCSO.
   - Procedures could be established where the MCSO requests that the police visit the residence of the deceased and the requestor in order to verify if there are more family members than those stated in the Death Testimony. In the case where the police identify a legal heir of the deceased that is not mentioned in the Death Testimony, prosecutors can rapidly be informed and investigations on false statements can be initiated (as this is contrary to Article 158 of the Criminal Code of Kosovo making it a serious offence). By this time, the MCSO would have already issued the Death Testimony and it is therefore important to create a mechanism to ensure that the courts and notaries are informed of its inaccuracy.
   - The establishment of a central database for notaries is ongoing. The estimated timeline for this project was May 2015, however at the moment it is still not completely operative (see footnote 14). This could be a suitable channel to alert notaries in order to delay or verify the procedures regarding the deceased persons. The civil court or its section on inheritance procedures should be notified by the prosecution and rapidly note in the registry that an investigation is ongoing. This suggestion is made as a temporary solution. However, it is clear that the ongoing advances in the electronic Central Civil Status Register (CCSR) will also have a positive impact on the identification of inheritors.

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27 Similar practices are observed between civil registries and municipal police units in some EU countries such as Spain, where any civil registration could be randomly verified by local police to avoid frauds.
28 As specified in Article 392 of the Criminal Code.
29 According to conversations held in March 2015 with the Chamber of Notaries. Update on 13 August 2015: The centralised database is ready, but its use is not yet implemented. According to the Chamber administrator, the notaries are currently being instructed on its use, which will be mandatory on 1st September 2016 for all notary offices.
• As the CCSR gets more reliable, the routines of the MCSO could be amended accordingly. The possibility for the inheritors to take an oath when providing information for the Death Testimony can also be explored. This is not foreseen in the LNP but applies in some EU member states. Such a provision would make the perpetrators guilty of false statement under oath with increased punishment should they seek to cheat legitimate inheritors out of their lawful rights in order to increase their own share.

3. **Ensure fair, non-discriminatory division of the inheritance.** In order to assure that no agreement against the will of any inheritor is accepted, the following recommendations are given:
   - The criteria for the agreement must be specified by the law, providing safeguards to the fair division among heirs regardless of their gender.
   - Define a time frame to reach an agreement in order to ensure that all rightful inheritors have been identified and all property has been registered.
   - Specify that all inheritors need to sign the agreement before the court or the notary, thus enabling the verification/analysis of their capacity and willingness.

4. **Address the issue of renunciations to inheritance rights by women heirs.**
   - In order to limit renunciations and make parties carefully consider whether the renunciation act is adequate, imposing heavier taxes or notary fees on such an act should be considered.
   - Some stakeholders and women’s rights NGOs have even suggested the prohibition of such a renunciation, temporary or permanently. However, the right to renounce should not be limited in cases which would bring financial burden to women heirs. For instance, in cases where there are more debts than assets, it would be fair to share the burden in equal parts. Unfortunately, this is not always granted by the current system.
   - Moreover, even if a woman heir is granted the right to inherit, the family could transfer her share to male relatives afterwards by drafting a gift document. Therefore, a heavier tax on gift contracts among relatives or co-heirs, regardless of their gender, could be considered to hinder unfair actions of renunciations.

5. **Highlight the right of both spouses to decide over the cohabitation and promote women’s right to participate in decisions over the property transactions of the family.**

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30 In the UK, the applicant of the grant of probate swears the oath in a local probate office.
As Article 36 LPRR does not do enough to ensure that the woman is included, it could be amended to better guarantee this. The amendment could consist of requiring the participation of both spouses in the transactions in case of marriage or cohabitation, despite the fact that the formal registered owner of the property or properties is only the husband.

6. **Ameliorate the Cadastral Administration in order to enhance the registration of properties in the name of both spouses/women.**

   - The KCA must comply with training needs, including seminars on the Law on Gender Equality and the Law on Family, in order to make it clear to MSO officials that the realisation of the rights of women is important.
   - To assure that the CSOs comply with the provisions, the KCA should conduct random checks and monitoring practices and identify problematic areas.
   - The administrative instruction for the MSO should be amended so that they are required to verify through the Central Civil Status Register if a person applying for registration of property ownership is married and if so, ensure that the spouse’s name is also registered as foreseen in Article 47 of the LF.
   - Likewise, the AIILC should be harmonised with Article 47 of the LF:” Notes of Owner” should include civil status and name of eventual spouse (see Article 5 paragraph 2).
   - To further spread the knowledge about the provisions in Article 47 and 50 of the LF among the citizens, the officials should also adopt the practice of asking the applicant about his/her civil status.

7. **The Ministry for Local Self-Governance should harmonise the Municipal Regulations on taxes and fees.**

   - It must be ensured that couples who buy and register a house in the name of both spouses are not charged higher fees than in the case when only one name is registered.
   - Likewise, the transaction tax should be charged only once per transaction and not per buyer. All municipal regulations on taxes and fees must be harmonised Kosovo-wide, possibly through the Ministry for Local Self-Governance instruction.

8. **Issue clear instructions to the members of the notaries and further conduct random verifications and continuous monitoring of existing discriminatory practices by the Notary Chamber.** It is necessary to enhance the safeguards for the expression of free will of the parties to the certified acts.
9. **The Government of Kosovo shall be encouraged to form a working group** tasked to conduct a systematic review of laws and practices in the area of women’s access to inheritance rights of real estate and accordingly propose amendments and necessary safeguards.

10. **Establish a specific targeted Legal Aid Service (not necessarily free of charge for every user)** to enhance and facilitate the access of women to information about their rights and the ways to defend them in courts and other institutions.
    - This could be accompanied by a media campaign to raise awareness about the formal equality of property rights, the non-binding nature of customary laws and traditions, and the existence of the Legal Aid Service itself.
DATE: 21.04.2015
Reference: Ref. Nr. 19/15
FOR: Mr. Andreas Moreno, Justice Monitor-EULEX.
FROM: Erdon Gjinolli, Head of Administrative Services in NCK
SUBJECT: Response to the request

Dear Mr. Moreno,

Upon your request, the Notary Chamber of the Republic of Kosovo, after receiving statistical data by some notary offices in the territory of the Republic of Kosovo, provides the following information:

Note: Some statistics are calculated based on completed cases by notaries, while other data on the number of female beneficiaries, depending on the data provided by notaries.

1. **Notary Office A, Istog:**
   - Contracts of sale of immovable property where the beneficiary is female, a total of 30 cases.
   - Judgment on inheritance where women are declared heir, total 45 women.
   - Heritage decisions on where women have withdrawn from hereditary measures, total 102 women.
2. **Notary Office B, Shtime:**
   - Contracts of sale of immovable property where the beneficiary is female, a total of 55 cases.
   - Judgment on inheritance where women are declared heir, a total of 27 women.
   - Judgment on inheritance where women have withdrawn from hereditary measures, a total of 111 women.
   - Cases where women are parties to the Contract on gift; 18 women.

3. **Notary Office C, Gjilan:**
   - Contracts of sale of immovable property where the beneficiary is female: from 163 contracts in 11 cases beneficiaries are women.
   - Cases where women are parties to the Contract on gift, from a total of 52 contracts, only 1 case was female.
   - Judgment on inheritance where women are declared heir, total 10 cases, from 30 in total.
   - Judgment on inheritance where women have withdrawn from hereditary measures, a total of 20 cases, from 30 in total.

4. **Notary Office D, Mitrovicë:**
   - Contracts of sale of immovable property where the beneficiary is female, a total of 7 cases;
   - Judgment on inheritance where women are declared heiress, 5 cases;
   - Heritage decisions on where women have withdrawn from hereditary measures, a total of 37 cases;

5. **Notary Office E, Prishtinë:**
   - Contracts of sale of immovable property where the beneficiary is female, a total of 203 cases. (Parties to the contract of sale, exchange, investment, gift)
   - Judgment on inheritance where women are declared heir, a total of 13 cases.
• Judgment on inheritance where women have withdrawn from hereditary measures, a total of 27 cases.

6. **Notary Office F, Prizren:**
• Contracts of sale of immovable property where the beneficiary is female, a total of 29 cases.
• Judgment on inheritance where women are declared heir, a total of 15 cases - 19 women.
• Judgment on inheritance where women have withdrawn from hereditary measures in favour of brothers or nephews, a total of 35 cases - 81 women.
• Judgment on inheritance where women have withdrawn from hereditary measures in favour of sister, mother, daughter, niece, a total of 10 cases - 16 women.

7. **Notary Office e G, Klinë:**
• The transaction contract of immovable property where the beneficiary is female, 12 cases in total.
• Decision on inheritance where women are declared as heir, 8 cases in total.
• Decision on inheritance where women have withdrawn from hereditary measures in favour of brothers or nephews, a total of 16 cases.
• Decision on inheritance where women have withdrawn from hereditary measures in favour of sister, mother, daughter, niece, a total of 3 cases.

8. **Notary Office H, Viti:**
• The contract of sale of immovable property where the beneficiary is female, a total of 9 cases.
• Cases where women are party to the Agreement on the Bounty, 2 cases.
• Decision on inheritance where women are announced heir, a total of 4 women.
• Decision on inheritance where women have withdrawn from hereditary measures, a total of 21 women.

9. Notary Office I, Suharekë:
• The transaction contract of immovable property where the beneficiary is female, 16 cases in total.
• Decision on inheritance where women are announced heir, a total of 25 women.
• Decision on inheritance where women have withdrawn from hereditary measures, a total of 238 women.

10. Notary Office J, Prizren:
• The contract of sale of immovable property where the beneficiary is female, a total of 75 cases, of which, 49 as a seller, 26 buyer quality.
• Decision on inheritance where women are announced heir, a total of 52 women.
• Decision on inheritance where women have withdrawn from hereditary measures, a total of 80 women.
• Cases where women are party to the Agreement on the Bounty 1 female.
• Cases where women are party to the Agreement on the retention Eternal 2 females.

11. Notary Office K, Kacanik:
• The contract of sale of immovable property where the beneficiary is female, a total of 12 cases.
• Decision on inheritance where women are declared heir, a total of 4 cases.
• Decision on inheritance where women have withdrawn from hereditary measures, THERE IS NONE.

12. Notary Office L, Prizren:
• The contract of sale of immovable property where the beneficiary is female, a total of 16 women.
• Decision on inheritance where women are declared heir, a total of 16 women.

• Decision on inheritance where women have withdrawn from hereditary measures, 71 females.

• Cases where women are party to the Agreement on the Bounty 6 females.

13. Notary Office M, Pristina:
• The contract of sale of immovable property where the beneficiary is female, a total of 60 women.

• Decision on inheritance where women have withdrawn from hereditary measures, a total of 18 women.

• Cases where women are party to the Agreement on the Bounty 4 females.

• Cases where women are party to the Agreement on the Maintenance of Eternal 1 case.

• Cases where women are party to the Agreement on the Exchange 1 case.

14. Notary Office N, Ferizaj:
• The contract of sale of immovable property where the beneficiary is female, a total of 13 cases, a total of 202 contracts.

• Decision on inheritance where women are declared heir, a total of 21 cases, out of 48 total verdicts.

• Decision on inheritance where women have withdrawn from hereditary measures, a total of 27 cases, from 48 cases in total.

15. Notary Office O, Kamenica:
• The transaction contracts of immovable property where the beneficiary is female a total of 57 cases, of which 22 cases are buyers and 35 cases in the quality of sellers.

• Decision on inheritance where women are declared as heir, a total of 18 cases.

• Decision on inheritance where women have withdrawn from the inheritance, 44 cases.
16. Notary Office P, Prizren:

- The transaction contract of immovable property where the beneficiary is female, a total of 12 cases, of which 8 cases are as seller and 4 cases as buyers.
- Decision on inheritance where women are declared as heir, a total of 36 cases
- Decision on inheritance where women have withdrawn from the inheritance, 67 females.
- Cases where female are party in a contract over gift, 15 females.
- Cases where woman are parties in a contract over permanent ownership, 4 females.

17. Notary Office Q, Suhareka:

- Decision on inheritance where women are declared as heir, 1 case.
- Decision on inheritance where women are declared as heir, a total of 5 females, from total of 37 cases.

18. Notary Office R, Viti:

- The transaction contract of immovable property where the beneficiary is female, a total of 18 cases, from total of 154 cases.
- Decision on inheritance where women are declared as heir, a total of 17 cases, from total of 77 cases.
- Decision on inheritance where women have withdrawn from the inheritance, total of 60 cases from 77 cases.
- Cases where female are party in a contract over gift, 15 females.
- Cases where woman are parties in a contract over permanent ownership, 4 females.
19. Notary Office S, Prizren:

- The transaction contract of immovable property where the beneficiary is female, a total of 42 cases.

- Decision on inheritance where women are declared as heir, a total of 33 cases.

- Decision on inheritance where women have withdrawn from the inheritance in favour of their brothers, 24 cases.

Pristina: 21.04.2015