



USAID
FROM THE AMERICAN PEOPLE

KOSOVO

PROPERTY RIGHTS PROGRAM (PRP)

GENDER, PROPERTY, AND ECONOMIC
OPPORTUNITY IN KOSOVO

JANUARY 2015

This publication was produced for review by the United States Agency for International Development.
It was prepared by Tetra Tech.

Prepared for the United States Agency for International Development, USAID Contract Number AID-OAA-I-12-00032/AID-167-TO-14-00006 – Property Rights Program in Kosovo under the Strengthening Tenure and Resource Rights (STARR) Indefinite Quantity Contract (IQC).

Author: Sandra Joireman, Ph. D.
Consultant Specialist in Property Rights
joireman@gmail.com
Tel. (630) 251-5222

Tetra Tech Contacts:

John (Jack) Keefe, Senior Technical Advisor/Manager
159 Bank Street, Suite 300
Burlington, Vermont 05401
Tel: (802) 495-0282
Email: jack.keefe@tetrattech.com

Don Cuizon, Project Manager
159 Bank Street, Suite 300
Burlington, Vermont 05401
Tel: (802) 495-0309
Email: don.cuizon@tetrattech.com

PROPERTY RIGHTS PROGRAM (PRP)

GENDER, PROPERTY AND ECONOMIC
OPPORTUNITY IN KOSOVO

JANUARY 2015

DISCLAIMER

The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

TABLE OF CONTENTS

TABLE OF CONTENTS	II
ACRONYMS AND ABBREVIATIONS	III
EXECUTIVE SUMMARY	IV
LAW AND COURT PROCESS.....	V
TRAINING AND CAPACITY-BUILDING ACTIVITIES.....	VI
ECONOMIC ENGAGEMENT OF WOMEN	VII
KNOWLEDGE BUILDING ACTIVITIES.....	VII
1.0 INTRODUCTION AND BACKGROUND	1
2.0 GOALS AND OBJECTIVES	2
2.1 LEGISLATION.....	2
2.2 LAWS PERTAINING TO GENDER AND PROPERTY.....	2
2.3 PROPERTY IN MARRIAGE AND DIVORCE.....	3
2.4 INHERITED PROPERTY	4
2.5 IMPLEMENTATION PROCEDURES FOR INHERITANCE AND TRANSFER OF PROPERTY	5
3.0 PRACTICE	8
4.0 CULTURAL ISSUES	12
5.0 ECONOMIC ENGAGEMENT OF WOMEN	14
5.1 MINORITY POPULATIONS.....	15
6.0 RECOMMENDATIONS	17
6.1 LAW AND COURT PROCESS.....	17
6.2 TRAINING AND CAPACITY BUILDING ACTIVITIES	20
6.3 ECONOMIC ENGAGEMENT OF WOMEN	22
6.4 KNOWLEDGE-BUILDING ACTIVITIES	23
WORKS CITED	25

ACRONYMS AND ABBREVIATIONS

CDCS	Country Development Cooperation Strategy
CLE	Contract Law Enforcement
COP	Chief of Party
CSO	Civil Society Organization
DANIDA	Danish International Development Agency
DO	Development Objective
E4E	Engagement for Equity
EU	European Commission
G2G	Government to Government
GOK	Government of Kosovo
IQC	Indefinite Quantity Contract
IR	Intermediate Result
KJC	Kosovo Judicial Council
MCO	Municipal Cadastral Office
MOJ	Ministry of Justice
MOU	Memorandum of Understanding
NGO	Nongovernmental Organization
NOA	New Opportunities in Agriculture
OSCE	Organization for Security and Cooperation in Europe
PACT	Program Action Plan TM
PRP	Property Rights Program
STARR	Strengthening Tenure and Resource Rights
UNMIK	United Nations Interim Administration Mission in Kosovo
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

The overall goal of the USAID/Kosovo Property Rights Program (PRP) is to improve the property rights regime in Kosovo, strengthen the rule of law, and increase economic growth and investment. The Property Rights Program has four objectives: 1) better coordination; 2) improved court procedures; 3) enhanced women's rights to use property; and 4) improved communication and understanding of property rights. While the primary focus of this report is on Objective 3, the findings and recommendations cut across all of the objectives.

The law related to both gender and property in Kosovo is modern and egalitarian. The problems that exist in law with regard to women's property rights are due to 1) inconsistencies in existing laws; and 2) problems in practice, specifically the differential application of law and bureaucratic strategies that allow the exclusion of women. The most significant inconsistencies in law pertaining to property rights are the different claims on resources that spouses have in legally registered marriages and "factual" marriages (see Section 2.3) and the lack of clarity with regard to the proper legal venue for uncontested cases of inheritance. There is additionally confusion as to whether uncontested inheritance cases can be processed by both the courts and notaries.

Many people in Kosovo do not go to the trouble of formalizing rights to immovable property. As a result, there is an overall problem in terms of a lack of engagement with legal processes regarding property ownership and transfer. When legal processes are used, the dominant issues in terms of the application of law pertain to the inheritance law and the usage of the clause on renunciation. Women frequently renounce their inherited property in favor of brothers and uncles for cultural reasons and in adherence to Albanian customary law. While no formal statistics on renunciation exist, and many women willingly renounce their inheritance rights, anecdotes abound regarding women who are excluded from inheritance as a result of coercion and subterfuge. An additional problematic aspect of the inheritance law in this social context is the ability of heirs to renounce the property rights of minor children without any external oversight as to whether the best interests of the child are considered.

These legal problems are exacerbated by bureaucratic difficulties at the municipality level in ascertaining the legal heirs of a deceased person. There are many opportunities in the inheritance process for the exclusion of legal heirs without their knowledge or consent. This causes particular problems for women, who by all accounts are most likely to be excluded. Moreover, women's engagement in the economy of Kosovo is extremely low in comparison to neighboring states, which is somewhat surprising given educational levels that are similar to those of men. Women face higher levels of unemployment and given the low levels of formalized capital that they can access, their self-employment opportunities are limited.

Recommendations suggested below are a result of this initial assessment of property and gender in Kosovo. They are intended to inform program design and identify areas where there is a significant absence of information. Some of the recommendations intentionally cut across all PRP objectives or relate to work being done by other organizations and donors. Additionally, a few of the recommendations specifically relate to legal and policy changes that would need to be made by the Assembly of Kosovo or appropriate government agency. Recommendations are divided into four different categories: law and court processes; training and capacity building in municipal administration; economic engagement for women; and knowledge creation.

LAW AND COURT PROCESS

1. *Exclusion of female heirs in inheritance processes/coerced renunciation of rights.* Recommend:
 - Conduct an analysis on the appropriateness of adding procedural barriers to the rights of renunciation of inheritance rights for women.
 - Support legislative change to ensure that any renunciation of inheritance rights by women includes 1) voluntary consent; 2) the opportunity for legal representation; 3) full-financial disclosure; and 4) documentation in conspicuous, plain language of the financial impact of renunciation. Comparative study of the timing of court cases from instigation to conclusion relates to three specific groups of cases: those addressing inheritance in which women claim their full rights, those addressing inheritance in which women renounce their rights or there are no female heirs, and those that pertain to property issues more generally.
 - Monitor courts and track contested cases to identify where delays are happening and what legal problems are occurring.
 - Provide legal aid services targeting women in inheritance proceedings and property registration.
 - Target a public awareness campaign at men regarding the benefits of including daughters and wives in inheritance.
 - Provide training to municipal gender officers, local notaries, and court officials with regard to Kosovo laws and inheritance processes.
 - Equip municipal gender officers to lead trainings on women's property rights and inheritance issues in rural areas of Kosovo where knowledge appears to be more limited regarding the law.
 - Address information-sharing issues at the municipality level which prevent the identification of female heirs.
 - Engage civil society organizations in educational activities around the issues of voluntary consent and legal representation.
2. *Exclusion of minor children from inheritance.* Recommend:
 - Support legal change to provide custodial oversight of renunciation cases involving minor children.
 - Conduct a full assessment of this issue, including an analysis of the correspondence of the Inheritance Law with the Charter on Fundamental Rights of the European Union (EU).
 - Organize a roundtable conversation on this issue with representatives from the Ministry of Justice, Organization for Security and Cooperation in Europe (OSCE), EU, and other interested parties. Develop recommendations for legal change consistent with the Charter on Fundamental Rights.
3. *Informal property rights.* Recommend:
 - Raise awareness through public education of both men and women, about the benefits of formalized property rights and encouraging the formal transfer of property after death.
 - Develop resources such as pamphlets and posters to inform the public about the processes of property registration.
 - Encourage the making of wills through Behavior Change Communication activities implemented by civil society organizations (CSOs) to change attitudes and behaviors about will making.
 - Engage civil society organizations CSOs in educational activities.
4. *The role of notaries in inheritance processes.* Recommend:

- Engage Ministry of Justice (MOJ), the Kosovo Judicial Council (KJC), and the Chamber of Notaries in a discussion regarding mechanisms to address legal gaps, including whether inheritance cases can be heard before a court or a notary.
 - Develop legislation to address any legal gaps creating confusion about the jurisdiction of courts and notaries over inheritance cases. Provide legal counsel to women and other vulnerable populations in inheritance cases heard before notaries.
 - Coordinate workshops across different municipalities providing training for notaries in the appropriate legal processes for inheritance cases.
 - Develop written guidance to be given to notaries dealing with inheritance cases.
5. *Communication of court processes.* Recommend:
- Require better identification of interested parties through coordination with municipal civil registry offices.
 - Train court officers regarding proper and appropriate issuance of summons to interested parties.
 - Investigate alternative processes for service of process (notification of parties) in the absence of a street address system in much of Kosovo.
6. *Inconsistencies in law regarding marriages.* Recommend:
- Advocate for legislative change to address any gaps and bring the Inheritance Law and Family Law into alignment.
 - Conduct a public outreach campaign to encourage legally registered marriages.
 - Hold a roundtable on this issue with women parliamentarian group(s) to raise awareness and promote legal change.

TRAINING AND CAPACITY-BUILDING ACTIVITIES

1. *Access to the Civil Registry.* Recommend:
- Conduct assessment into the civil registry issue and identify where, precisely, the best and most efficient interventions could occur.
 - Digitization of the paper civil registry records transferred from Serbia for easier access. Coordinate with DANIDA and other donors who funded the initial project.
 - Develop strategies for the coordination of civil registry with property registry in the municipal cadastral offices (MCOs).
2. *Underused Municipal Gender Officers.* Recommend:
- Advocate for more visibility for municipal gender officers within municipality offices. Promote/provide signage as to the location of their offices.
 - Ensure trainings that occur with municipal courts, MCOs, or civil registries include the municipal gender officer so they may be made aware of the correct practices and become better integrated into the workings of the municipality.
 - Equip and fund municipal gender officers to provide training/informational workshops in rural areas on law related to inheritance and will making.
 - Hold a workshop for all municipal gender officers on joint titling of marital property and to make them aware of new MCO processes regarding lower fees for joint titling of property. Use this event to also have them share best practices regarding interventions on property and economic engagement for women.
3. *Inconsistent Municipal Cadastral Office Processes.* Recommend:

- Develop strategy to resolve the accountability issue for MCOs.
- Create posters and other visual materials that would guide both MCOs and citizens using the services of the MCOs.
- Work with Council of Notaries to create consistent practices for notaries in dealing with property division, develop a case book and written materials or online resources to promote consistency.
- Use small grants to fund design projects for materials.

ECONOMIC ENGAGEMENT OF WOMEN

1. *Barriers to women's economic engagement.* Recommend:

- Develop materials targeted at women around issues of business registration and ensure that the capital resources of businesses they own or contribute to are registered in their names.
- Encourage will making for women so that they can 1) control the assets they develop in their lifetime, and 2) provide for minor children in the case of their death.
- Augment the workshops Crimson Capital is currently running, which address access to credit for women-owned businesses. Add component on the importance of business registration in women's names and ensuring any capital assets of the business are in the names of women.
- Provide grants for local lawyers or nongovernmental organizations (NGOs) to assist with formalization of assets and the provision of information.

2. *Specific challenges to women in the agricultural sector.* Recommend:

- Engage women farmers in focus groups regarding their agricultural inputs and where they might benefit from an increased formalization of their property.
- Engage men in educational activities to promote their understanding of the overall benefits of women's property ownership.
- Assess the specific challenges of property registration overall, and specifically for women in the rural context in Kosovo, where there are anecdotal reports of fears of farm fragmentation and loss of agricultural land.
- Engage in public relations activities which focus on the role of women in farm families as important economic actors and decision makers, rather than informal, unpaid labor.
- Create small grant opportunities for livestock or equipment purchases for women in agriculture or women's agricultural cooperatives.
- Partner with a CSO to run a competition designed to promote a "Kosovo model farming household" based on the model farmer method, but emphasizing women's role in agriculture and household income-generating processes.

KNOWLEDGE BUILDING ACTIVITIES

1. *Lack of information regarding factual marriages.* Recommend:

- Assess the full property implications of factual vs. legally registered marriages. Identify how factual marriages are being handled by the courts and notaries in inheritance cases, and which law is followed.
- Identify any property impacts on minors of factual vs registered marriages.
- Develop a strategy for engaging this issue/coordinate with suggested activities from point 6 above.

2. *Lack of information regarding property concerns of women in minority populations.* Recommend:

- Develop an assessment of the property issues of minority community women.

- Conduct a needs assessment of existing property concerns of women in the Roma, Ashkali, and Egyptian communities.
 - Address whether stereotypes of Serb women having greater access to property are accurate and whether this leads to their greater economic engagement.
 - Identify to what extent interventions targeted at the majority Albanian population would need to be changed to address the needs of minority women.
 - Use grants to collaborate with CSOs to identify property concerns of minority women.
3. *Absence of positive narratives around women's property rights.* Recommend:
- Gather examples of property sharing among siblings that adhere to Albanian family norms without excluding women.
 - Engage a group of female economists, lawyers, and parliamentarians in Kosovo around the issue of inheritance and develop strategies for culturally appropriate property sharing.
 - Develop publicity campaign targeting men around specific strategies for inclusive inheritance.
 - Create small grant opportunities, targeting university students, to articulate culturally embedded and egalitarian inheritance narratives. Grant opportunities should be made available to professors, student organizations, or programs.

1.0 INTRODUCTION AND BACKGROUND

USAID's Property Rights Program (PRP) is a four-year activity that aims to address property rights challenges and develop a plan for stabilization of the property rights regime in Kosovo. The program will work in partnership with the Government of Kosovo (GOK), selected municipalities, and other relevant local and international stakeholders.

PRP supports the following objectives:

- Objective 1: Better Coordination and Policy Priorities;
- Objective 2: Improved Court Procedures Related to Property Claims;
- Objective 3: Enhance Women's Rights to Use Property in Practice; and
- Objective 4: Improved Communication, Access to Information, and Understanding of Property Rights.

The Property Rights Program will support the Ministry of Justice (MOJ) to own and direct the property reform process and coordinate the European Commission's (EU) and other donors' support to the MOJ with technical inputs from line ministries and agencies to rationalize reform efforts and maximize development impacts. PRP has a mandate to improve court procedures related to property claims, with emphasis on improving court practices to remove constraints to women inheriting property in practice. PRP's activities with the courts will inform EU assistance to the MOJ to draft implementation-oriented property legislation. PRP results under Objectives 1 and 2 support improved legal regimes, stronger implementation, and improved court performance that contributes to achieving Development Objective 1 under USAID/Kosovo's Country Development Cooperation Strategy Development (CDCS), "Improved Rule of Law and Governance that Meets Citizens' Needs." Improved legislation and court procedures also support creation of an improved economic governance and business environment under CDCS Development Objective 2, "Increased Investment and Private Sector Employment."

The activity supports USAID Forward implementation and local solutions by building sustainable organizational and technical capacity of Kosovo civil society organizations (CSOs) and municipal governments to manage and administer USAID direct awards through grants and Government to Government (G2G) agreements under Objectives 3 and 4, respectively. Under Objective 3, CSOs will develop and implement public information and advocacy campaigns to inform women and men about women's rights to property and change attitudes and behaviors about these rights. Under Objective 4, municipal capacity will be built to improve delivery of property-related services, enabling citizens to more efficiently transact their rights to property.

2.0 GOALS AND OBJECTIVES

The goal of this report is to document the range of issues preventing women from effectively exercising their property rights, including specific recommendations for improving legislation, court practices, and administrative processes. The report will begin with a gap analysis of the legal, procedural, and administrative barriers constraining women from inheriting property, and through this process, identify additional cultural issues which prevent women and girls from exercising a broader range of property rights. These findings are then used to propose additional research and activities that PRP might develop to support stronger property rights for all citizens, for women in particular, and to identify opportunities for linking strengthened property rights of women to business development.

The primary methodology for this report was a review of legislation pertaining to property rights, gender, court processes, and inheritance. Legislative review was augmented by secondary source evaluation of academic research and NGO reports. This law and policy review was further enhanced in-country by targeted interviews with municipality officials and policy experts. Additional sources of information included news reports, process tracing, participation in a workshop, and quantitative analysis of available data with the goal of providing a comprehensive overview of law and practice pertaining to women's property ownership and economic engagement.

2.1 LEGISLATION

Most of the law related to women's property ownership and inheritance in Kosovo is relatively new, dating from the founding of the state with the earliest law published in 2003. Prior to the formation of an independent state, women's property rights and inheritance were governed by egalitarian laws in the Socialist Federal Republic of Yugoslavia (Bonfiglioli, 2013). On the whole, law in Kosovo meets international norms for gender equality in the economic and social spheres. The 2008 Constitution of Kosovo, Article 7(2) notes that "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." In the following section, the overarching framework of law pertaining to gender in Kosovo will be analyzed followed by a discussion of additional implementing legislation.

2.2 LAWS PERTAINING TO GENDER AND PROPERTY

The Law on Property and Other Real Rights from 2009 sets the framework for all property ownership and transfer in Kosovo for all citizens. Three additional laws provide a framework for gender equality in Kosovo and for women's access to property: the Law on Gender Equality, the Inheritance Law, and the Family Law. These three laws were all passed in 2004. Laws created during the United Nations Interim Mission Administration in Kosovo (UNMIK) are modern, egalitarian, and intentionally consistent with EU requirements. The Law on Gender Equality begins by setting goals for the society. There is an explicit protection of women's property rights in the law. Section 12.1 reads "The economical [sic], financial, employment and social welfare legislation and the macroeconomic, micro-economic, financial and privatization programs including the right of heritage and property, loans and natural resources shall enable the equal and full participation of both females and males" (Provisional Institutions of Self

Government, 2004b). Under this general rubric of economic equality, further protections are specified including the joint ownership of property acquired during marriage. An amended Law on Gender Equality is currently under discussion in the assembly as is a Draft Law on Protection Against Discrimination which among other characteristics prohibits discrimination based on sex, gender, gender identity, family and marital status, and disability (Draft Law on Protection Against Discrimination, 2014).

There are other guarantees of nondiscrimination already present in law, most importantly, in the constitution. Article 24 (2) of the Constitution of Kosovo states that “ No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status.”

2.3 PROPERTY IN MARRIAGE AND DIVORCE

Article 37(2) of the constitution says that "Marriage and divorce are regulated by law and are based on the equality of spouses". The Family Law supplements the constitution and protects the rights of women to voluntarily enter into marriages, decide with their spouse where their place of residence will be, jointly own property acquired during their marriage, and retain sole ownership of property they bring into marriage. Women are also given a right to the division of joint property after divorce (Provisional Institutions of Self Government, 2004a). There are some potential gaps in the Family Law with regard to the status of marriages which will be discussed in detail below.

Informal or unregistered marriages are common in Kosovo, therefore how they are treated in law is important. It is not habitual for people to be officially married and have the marriage registered with the municipality. People often have a family wedding and consider themselves to be married without the legal formalization or registration of the marriage. Article 14 of the Family Law defines marriage as “a legally registered community of two persons of different sexes, through which they freely decide to live together with the goal of creating a family.” Under the law, people without registered marriages are also viewed to be married (in what is referred to as a “factual relationship” or an “out-of-marriage relationship”) if “they: 1. are eligible to marry, but did not obtain a legal marriage, and 2. have cohabitated openly as a couple.” This definition presents a number of problems which will be detailed below. The first problem is the low threshold for recognition and the second is the inconsistency with the Inheritance Law, which sets much higher standards for the recognition of a spouse in a factual relationship.

While there is variation in terms of when factual relationships are recognized as marriages in other European countries, Kosovo’s standard is very low. Some European countries require three years of cohabitation before recognition (Bosnia and Herzegovina, Croatia), others require registration of cohabitation (Bulgaria, Czech Republic) or do not recognize cohabitation as legally similar to marriage (Italy, Latvia, Moldova) (Council of Europe, 2009). There is additionally some inconsistency as Article 90 of the Family Law talks about property rights that accrue to spouses with a “legally registered marriage.” Whereas in other clauses the law is clear that the property relationships between the spouses in a factual relationship should be the same as those in a legally registered marriage.

Where issues of unregistered marriages become particularly problematic is if a spouse dies. There is a large legal gap between the Family Law understanding of “factual” marriages and the Inheritance Law which has multiple restrictions on the ability of a recognized spouse to inherit if a marriage is not formalized. The Inheritance Law states in Article 28 that:

28.1. A man and a woman cohabiting in a non-marital relation may inherit each other as spouses if:

a. The non-marital relation with the decedent up to the moment of death has lasted for at least 10 years, or children were born from this relationship, for at least 5 years, and

b. At the moment of the decedent's death, neither of the cohabiters was legally married to a third person, or if the decedent was legally married to a third person, he had filed a petition for divorce or annulment of his marriage, and after his death such petition was found to have merit.

28.2. *Cohabiters shall not be compulsory heirs.*

28.3. *A cohabiter shall not inherit if the couple has not been living together for a long time.*

Cohabitation without a formally recognized marriage puts the cohabiters in a legal gray area with regard to property rights if one of them dies. While their marriage may be recognized by the state, claims on the property of their spouse will not be recognized unless they have been living together for 10 years or for 5 years with children. For women, this is particularly problematic as there is legal ground for them to be excluded from inheritance processes.

2.4 INHERITED PROPERTY

As is apparent, one of the most pertinent laws regarding women's property ownership in Kosovo is the Inheritance Law. It is egalitarian, naming spouses and children as constituent parts of the first "rank" of compulsory inheritors when a person dies intestate.¹ Since the writing of wills is not a common practice in Kosovo, the content and application of this law is particularly important for the property rights of women. Spouses and children, as compulsory heirs in the first rank of inheritors, split the shares of the estate equally (Inheritance Law Articles 12.1 and 12.2). For example, if a man dies leaving a spouse and three children, his spouse will inherit one-quarter of the property and each of his children will inherit one-quarter of the property.

This requirement entails a cumbersome process of valuing the property left by the deceased to determine the exact share of each child and the spouse. If the estate of the deceased is limited—for example, only the residence of the family—the desirability of valuing and then dividing the estate into four equal portions is limited and may create an additional impediment to the following formal inheritance processes. If the estate of the deceased is contested and the case is heard in the courts, or if the heirs choose to pursue the division of the estate in court, then the court may invoke Article 142 of the Inheritance Law, which allows for a different allocation of property based on the payment of value to some heirs.

Article 142.1 of the Inheritance Law provides that upon the request of an heir, who cohabited or worked with the testator in the same community, the court may—if it finds that there are reasonable grounds for the request—decide to assign him one or several movable or immovable things, or groups of things, that would belong to the share of other heirs, and that he shall pay to the other heirs a monetary amount equal to the value of these things, within the time limits set by the court taking into account the circumstances of the case. This provision would allow a family home or estate to remain in the possession of one heir as long as the value of the shares was paid to other inheritors.

The Inheritance Law does not allow the exclusion of female, or any "compulsory" heirs in cases where there is a will unless there is cause for exclusion. Article 114 of the Inheritance Law defines the grounds for exclusion as follows:

The decedent can exclude from inheritance, in his will, an heir who has the right to the compulsory share:

¹ This establishment of ranks of inheritors is typical of civil legal systems which guarantee inheritance to children. In common law systems it is customary to have an estate handled in probate to go entirely to the spouse who then can decide the best care for the children (Shapo, 1993).

- (a) *If he has committed a grave offence against the decedent by violating a legal or moral obligation;*
- (b) *If he has deliberately committed a criminal act against the decedent, or his or her spouse, child, or parent;*
- (c) *If he is dissipative, does not want to work, or is involved in amoral life.*

There is the potential for subjective interpretation of the violation of a moral obligation mentioned in 114(a), though it is not clear whether this is problematic in practice. Apart from this reservation, female heirs cannot legally be excluded from inheritance in cases of testamentary distribution or intestate succession unless they formally renounce their rights. However, the presence of a will does not preclude the possibility that female heirs will renounce their inheritance.

The critical aspect of the Inheritance Law that has the greatest impact on women's property issues is the right to renouncement in Article 130, the first four clauses of which are as follows,

130.1. The heir may renounce to the inheritance by a statement made to the court, until the inheritance proceedings are completed.

130.2. The renouncement shall apply to descendants of the person who renounces to inheritance unless that person has explicitly stated that he only renounces on his own behalf.

130.3. If his successors are minors, permission for the renouncement from the custodian body shall not be required.

130.4. An heir who has renounced on his behalf shall be deemed never to have been an heir.

(Provisional Institutions of Self Government, 2004c).

The use and interpretation of this legal guarantee has become problematic as women (and sometimes men living abroad) are excluded from inheritance without formal renunciation. Although the provision for the renunciation of inheritance rights is a standard part of most inheritance or probate law, it is most frequently used if the inheritance would constitute a financial burden to the heir. For example, a person might renounce an inheritance if they felt that a particular plot of land or immovable property would cost them more in terms of taxation and upkeep than it was actually worth. In Kosovo, renunciation of inheritance rights is most frequently used by female inheritors to allow the patrilineal transfer of family resources and increase the percentage of resources left to male heirs. Moreover, the law allows parents to renounce the inheritance rights of children under 18 without oversight.

Although the law appears to provide that female heirs will not be excluded from an estate without explicit and freely given renunciation of their rights, such safeguards do not appear to be afforded through implementation of the law in practice. There are well-publicized cases and other anecdotal evidence of women being deprived of their property rights without formal renunciation (see text boxes in this report). Moreover, given the cultural context which will be addressed in greater detail below, allowing adults to renounce the property rights of minor children (Article 130 (3)) with no custodial oversight is particularly problematic as minor female heirs can easily and legally be excluded from inheritance.

2.5 IMPLEMENTATION PROCEDURES FOR INHERITANCE AND TRANSFER OF PROPERTY

There are two laws that impact implementation of law in general and the Inheritance Law in particular. These two laws are the Law on Notary and the Law on Contested Procedures (Law on Notary, 2008; Law on Contested Procedure, 2008). In Kosovo, uncontested inheritance procedures can be heard before

notaries rather than in the courts. Article 29 of the Law on Notary, which identifies notary functions, notes that notaries are: “To deal with all non-contentious inheritance proceedings” (Law on Notary, 2008). However, some courts of first instance in Kosovo consider uncontested inheritance cases (Dean, 2014). “Latin Notaries” are found in a number of civil law systems in Latin America and Europe and have a remit of writing up contracts and Decisions of Inheritance in cases where there is no dispute to mediate (Law on Notary, 2008). They are trained lawyers and their fees are set by the MOJ. The intent of the notaries is to save the time of court officials and to quickly move cases through to formalized agreements. What this means in terms of inheritance is that many cases are handled by notaries rather than by court officials. In cases where a family comes to an agreement on the division of property, they all appear before the notary with the necessary documents. This is where women, or anyone else in the family, would renounce their inheritance rights. Notaries are believed to be more expensive than the courts, but they are also more efficient. One notary reported that it was possible to complete the inheritance process in three days if the family had all of the correct forms with them (Kostanica, 2014). This would assume that a family had title documents for all properties along with their valuation, birth certificates of all the inheritors, and the Act of Death from the municipality.

Notary fees are set by the MOJ, calculated based on the value of the inheritance and are generally regarded as high. A comparison of the fees for inheritance cases is as follows.

TABLE 1. FEES FOR CIVIL PROCEEDINGS (IN EUROS)

Value of Property	Court Fee	Notary Fee
0-1,000	15	20
1001-2500	20	20
2501-5000	25	30
5001-10000	50	50
10,001-20000	50 + .05% of value over 10,000 to a maximum of 500	50
20001-60000		60
60001-100000		120
100,000 +		20 additional Euro for every 20,000 to a maximum of 1000

Notary fees from Ministry of Justice Administrative Instruction No. 02/2012 On Provisional Notary Fees. Court fees from Administrative Direction No. 2008/02 on the Unification of the Court Fees. Amended and Supplemented by KJC Decisions: KJC no.20/2012 dated 09 March 2012 and KJC no. 37/2012 dated 23 March 2012

As is apparent, notary fees are double with higher values of property, while at low property values the differences are insignificant. Notaries are also allowed to charge an additional 5% for each additional party to a contract when there are more than two parties. There is an additional important caveat in interpreting this chart, as the courts can waive fees for people in “poor economic situations.” Notaries have no such discretion.

For some families then, there is a monetary advantage to having their cases heard in the courts, even if they are not contested. Currently the law is sufficiently vague that people in some municipalities can choose either option, and the courts are cheaper, albeit slower. The procedural guideline in the Inheritance Law is Article 145. “The rules of procedure for courts, other bodies, and authorized persons in inheritance matters are regulated by the dispositions on non-contentious proceedings.” On plain reading this is confusing as it addresses courts yet notes that this is a non-contentious proceeding, which would then be handled through a notary. The Law on Property and Other Real Rights (2009) allows for choice with regard to the use of courts or notaries in property transfer noting in Article 36.2 that “The contract for the transfer of ownership of an immovable property must be concluded in written (sic) in the presence of both

parties before a competent court or a notary public.” It is therefore, not entirely surprising that courts are inconsistent in their handling of inheritance cases.

An examination of court processes in three courts of first instance in Kosovo has shown that some courts will not consider uncontested inheritance cases (Ferizaj/Urosevac and Gjakova/Djakovica) and insist that these be taken to notaries, while other courts (Gjilan/Gnilane) do consider uncontested inheritance cases (Dean, 2014). This places a burden of expense on families that may not be able to afford the notary fees and may create an impediment to the intergenerational transfer of property. The fact that some courts will consider uncontested inheritance cases and others will not, creates confusion with regard to the application of the law. Further implementation concerns are noted below.

3.0 PRACTICE

There are multiple reports that the legal process for inheritance is not always followed and that women face significant hurdles in 1) legally defining their property rights, and 2) protecting their property rights against alienation. This problem has been noted in past literature and reports (Advocacy Training and Resource Center 2014; Joireman, 2013; Joireman, 2015), and is increasingly becoming part of a public discussion as property rights problems of women are covered in the media. In the following section, the specific mechanisms via which women's legal rights to property are subverted will be identified.

EVEN ELITE WOMEN FACE PROBLEMS

Ms. Safete Mustafa, a well-known Albanian singer, lost her husband and the father of her children in 2014. Together they had built a house in Suharekë where they lived together with their daughters. When her husband passed away, his brothers claimed the house as their own and she was forced to leave. The house was then occupied by one of the brothers and Ms. Mustafa's mother-in-law. The brothers argued that while they recognized the right of Ms. Mustafa's daughters to the house, they did not recognize her right to the house (Hasanaj, 2014). Ms. Mustafa claimed her right to the house on the basis of her financial contributions to it. Under the Inheritance Law, she and her children would be in the first rank of inheritors and would inherit the property whether or not she financially contributed to it. She clearly felt the need to make an even stronger claim. A decision on the case is still pending.

The first and most obvious problem is if a family does not follow any formal process to divide up an estate and instead simply leaves everything in the name of the person who died (or even in the name of a person in the generation before the deceased). In this case there is no possibility of formally ascertaining property rights for any legal heirs, much less protecting the property rights of women. This is a common situation in Kosovo. Many families choose not to go through any formal process of inheritance because they feel that their property rights are secure without title and they do not see any potential benefit to offset the costs of value assessments and formal title transfer. For the families that make this choice, either due to cost or convenience, excluding female heirs or even male heirs may not be an explicit choice, but a *de facto* occurrence based on who is in the country and occupying the family property.

Families that seek to follow formal inheritance processes in distributing an estate can decide to go through the courts or through a notary as discussed above. The most straightforward process is to use a notary. The process that a family would follow from the certification of death to the distribution of property is illustrated below in Figure 1 with each office that would be visited listed on the left hand side and each step along the bottom of the chart. Using the courts to get an Act of Inheritance would potentially take many more steps, as a result of postponements and scheduling issues, and is only allowed in some municipalities. Additionally if the inheritance case was a contested procedure then there would be a need for hearings regarding temporary security measures, and possibly a need for expert testimony regarding the valuation of properties and verification of documents.

FIGURE 1. INHERITANCE AND PROPERTY TRANSFER PROCESS FOR UNCONTESTED CASES USING A NOTARY

Civil Registry Office (place of death)			X					X						
Hospital	X													
Notary	X				X				X	X		X		
Municipal Cadastral Office					X						X			X
Civil Registry Office (place of birth)		X					X							
Municipal Property Tax Office												X		
Bank						X								
	Medical statement of death or statement of two witnesses	Birth certificate of the person who died	Death certificate	Request for Review	List of Properties owned	Bank statements	Birth certificates of all heirs	Act of Death	Document review	Declaration of Inheritance	Division of Property	Division of Property	Pay Transaction Tax	Certificate of Ownership

Required steps in the process of transferring inherited property.

Following the law and public policy practices regarding inheritance in an uncontested case requires a person to follow all of the steps indicated above from the left hand side of the diagram to the right. Women face challenges to their legal rights to inheritance in the highlighted areas. Specifically, women can be excluded from inheritance via the following mechanisms:

- 1) If the birth certificates of female heirs are not presented to the civil registry office, then women may not be listed on the Act of Death.²
- 2) Once the Act of Death is provided by the civil registry office, a notary can begin the process of preparing the Declaration of Inheritance, formally dividing the estate based on the listed heirs only.
- 3) Women can formally renounce their inheritance rights at any meeting with a notary.
- 4) Any legal heir may also renounce the rights of all, or some, of their minor children.

If women are going to be formally excluded from inheritance, it is typically at the points highlighted in the chart. Informal exclusion from inheritance will occur for women and men if there is simply no attempt to divide an estate after the death of a relative.

The problems in the documentation process in inheritance procedures are worthy of specific note. Male heirs can pursue a Declaration of Inheritance without naming their sisters, mothers, or other female relatives. The power dynamics between men and women within families are such that this is a frequently mentioned method for the exclusion of women from inheritance. At no point in the legal process of property transfer does anyone check to determine whether or not there are any additional heirs. It would be most efficient for the civil registry office to check legal heirs as that is typically where the data are held, but they do not do so for a variety of reasons having to do with data storage, access and management. For example, records from the period before 2000 are held in paper copies, while post 2000 records are digitized. Records can also be held in multiple places within the same municipality. For example, in Pristina there are five different locations in which a person's birth certificate can be held, with the year of birth determining which records are held where. A civil registry office is usually quite busy; checking records in both digital and paper copies or across multiple sites is beyond the capacity of many offices.

Women may be listed on the Act of Death and then decline to inherit in front of the notary who then writes up the Declaration of Inheritance in the manner the family has agreed. Since all of the heirs or their representatives must be present before the notary when this happens, the possibility for coercion of women is high. The gendered power dynamics within families make it difficult for women to express their desire to inherit if they are in opposition of male family members. A female heir could get legal representation to attend the meeting in her place, but the cost is potentially prohibitive and any opposition at that point should lead a notary acting in good faith to direct the case to the courts as it has become a contested procedure.

It is not clear whether the courts are more diligent in protecting the inheritance rights of women than the notaries. They are both tasked with following the same legal inheritance process. There is little reason to suppose that notaries would be free from the same sorts of cultural pressures and obstructionist action by families trying to exclude heirs. Court monitoring in the Lipjan branch of the Pristina basic court, in Peja and in Gjakova all identified the problem that Acts of Death did not include the names of all the legal heirs, females were noted for their exclusion (Advocacy Training and Resource Center, 2014). This problem has been observed elsewhere with regard to male heirs being additionally excluded when they

² The Act of Death has three parts. The first part details the information about the person who died. The second part lists all of the heirs and documentation (birth certificates) of their parentage must be provided. The last part of the Act of Death lists all of the properties, bank accounts, etc. that will be part of the inheritance.

are out of the country (Joireman, 2013). Courts have not appeared to be either particularly protective of the rights of vulnerable populations, or efficient in disposing the cases before them. The case of Ms. Shyhrete Berisha (text box below) is an infamous example that has been covered sympathetically in Kosovo news outlets.

VULNERABLE POPULATIONS

Ms. Shyhrete Berisha is engaged in a legal battle to recover the family home of her late husband in Suharekë, in southwestern Kosovo. Her case is particularly interesting because she was a casualty of the war in Kosovo. During the conflict, her village was attacked and her four children and husband were all killed. She was seriously injured and left the country to get medical treatment. When she returned, she was locked out of the family home by her in-laws. Ms. Berisha is a legal heir of her husband and began a court proceeding 12 years ago to reclaim the home. So far, a determination on her case has yet to be made (Gashi, 2014). Ms. Berisha's case is famous within Kosovo and evokes much public sympathy because of her suffering during the war and the length of time the courts have taken to resolve the case. This case and others like it raise issues as to the willingness of the courts to challenge tradition when it conflicts with the law.

One observed problem in court practice that does not pertain to inheritance processes followed by notaries, is the role that the head of the family can play in responding to a court summons. If an inheritance case is heard in the courts rather than before a notary, then the court has to notify persons related to the case regarding the time and location of the hearing. In the best of circumstances, summons would go to each individual involved in the inheritance case to ensure they are notified when proceedings occur. However, there are cases in which this is not happening and where the head of a household has been allowed to sign a court summons notifying all members of the family of an inheritance case. This was noted in Gjakova through a court monitoring process (Advocacy Training and Resource Center, 2014). If the head of household is allowed to sign on behalf of all family members, then it is easy to exclude married daughters not living with the family from inheritance proceedings. Problems regarding the notification of court processes which can result in postponements and delays have been identified elsewhere (Dean, 2014).

An additional problem for anyone wanting to transfer property in Kosovo, for inheritance or other reasons, is inconsistent processes in the municipal cadastral offices. Municipalities across Kosovo are handling property transfer in a variety of ways. They charge different fees for the same documents, follow different processes, are inconsistently organized across municipalities, and vary in their professional capacities. Inconsistent practices between municipalities are exacerbated by inconsistent legal processes. For example, notaries in some municipalities require two contracts for the separation of a plot of land into two parcels (Ramadani, 2014). There are multiple reasons for such inconsistencies including unclear chains of command between the Kosovo Cadastral Agency and the mayor of the municipality and attitudes and perceptions among municipal officials as well as the public that property is secure and, therefore, registering rights to property is not a concern (Beale, 2014). These problems are exacerbated by a lack of written protocols or manuals that elaborate how municipalities are to handle land transfers.

4.0 CULTURAL ISSUES

There are multiple explanations of why there is such a gap between the law regarding property rights and the practices that we see applied in the courts. In the section below, two will be addressed: Albanian customary law and the impact of informal inheritance.

There are strong, differentiated, gender norms among the Albanian population of Kosovo, which is approximately 90% of the overall population. These norms are influenced by the Albanian customary legal code, the *Kanun of Lekë Dukagjini*. The *Kanun* is emphatic in its support of patrilineal inheritance practices stating that “In the event of the inheritor being female, then a man must be sought up to the 12th remove so that this property is not left to a woman” (Fox, 1989). Leaving property to women, for many families, means transferring it outside the family of origin and to the families of sons-in-law, outside the male line of inheritance. Moreover, as noted above, home ownership is often not registered and, if it is registered, it is in the name of a man rather than in the name of a married couple (Gashi, 2014).

Albanian tradition impacts women’s renouncement of inheritance rights. Some people feel that it is an embarrassment for women to bring property into their marriages. A woman claiming inheritance rights could bring shame to her natal family as it appears that she does not sufficiently value her family, and in particular her brothers, who will lose a portion of their inheritance if it goes to their sister(s). Shame and embarrassment are terms frequently used by women when they describe keeping or inheriting family property (Joireman, 2015; Muhamet Brajshori et al., 2012). Sisters and brothers are supposed to support one another, with brothers providing social and political support to their sisters and the sisters deferring their property rights to their brothers.

THE IMPACT OF THE KANUN TODAY

Ms. Naxhije Krasniqi’s father died and his property was divided in 1986. At the time of his death, Ms. Krasniqi and her mother renounced their property rights to Ms. Krasniqi’s paternal uncles, following the practices of the *Kanun*. They did so with the understanding that her uncles would then look after her mother, who continued to live in the family house and Ms. Krasniqi’s brother’s widow, who was also living with them. Her uncles divided the property into three portions with one portion going to Ms. Krasniqi for her use. However, they did not look after Ms. Krasniqi’s mother, who died in the home of her own parents. Ms. Krasniqi then challenged her uncles in court for the rest of the property she was entitled to from her father. She argued that they had not upheld their end of the bargain. They had not looked after her mother or her brother’s widow properly, so she wants her property back. The case is still in the courts (Hasanaj, 2013).

Another frequently heard and related explanation is that property should go to male family members, to ensure that a woman has a place to which she can return if her marriage fails or if she suffers from domestic abuse. However, the same strong traditional values undermine the functioning of this norm as municipal gender officers and others report that in cases of divorce, separation, or domestic violence women are often not welcomed back into their natal families because the dissolution of their marriage brings shame to the family (Kaliqi, 2014). Thus women are caught in a bind, particularly in cases of divorce or separation. Social norms which lead them to renounce their property rights in favor of their male relatives do not always provide them with the implied reciprocal benefits. There are efforts to raise

awareness of the problematic nature of these practices, but cultural change takes time. In other contexts, studies of property rights for women have shown a correlation between lower rates of domestic violence and women's property ownership (Open Society Foundations, 2014).

Agricultural livelihoods contribute to the continued resonance of the *Kanun* in the lives of many Kosovar Albanians. The desire to prevent the fragmentation of family land holdings is a concern for many rural families. Excluding daughters from inheritance is one way of ensuring patrilineal land holding and preventing the division of agricultural land. In some families this concern leads to an explicit or implicit division of family resources. So in some families, a daughter might be sent to university while her brothers will not. Instead, the brothers will inherit the family farm. Or a family could invest in the provision of a gift to the daughter at the time of her marriage (*Paja, Prika or Çejz*) with the idea that this is her part of the family inheritance. These are all strategies via which families can divide up resources prior to the death of the parents. In a culture in which the making of wills is not common, these are mechanisms via which families seek to provide for female children while still maintaining tradition. Variations on these strategies of inheritance are evident in urban areas as well. One can see families in which the care of the parents is left to the youngest brother with the understanding among siblings that he will then inherit the family house. Rarely are these agreements articulated formally and this is part of the reason why formalized inheritance processes are not pursued. As is the case anywhere in the world, informal agreements among family members regarding the division of family property are more or less successful depending on the relationships within the family.

In Kosovo, the informality of property rights generally and property rights for women in particular has wider economic implications. First, as noted in the sections above, it is easy for women and minor children to be completely excluded from intergenerational capital transfers. Second, the lack of formalization of women's property rights restricts their ability to be actively engaged in economic activities.

5.0 ECONOMIC ENGAGEMENT OF WOMEN

If women do not own property in their own names it is difficult for them to start businesses; control property investments; or to use their homes as a source of capital. The legal recognition of women's property rights is a key component to their role as economic actors (Hallward-Driemeier and Hasan, 2013). Indeed, women's economic engagement in Kosovo is low for the region and extremely low overall as illustrated by Table 2 below.

TABLE 2. COUNTRY COMPARISON OF KEY LABOR STATISTICS

Kosovo 2013	Labor Force Participation Rate		Employment to Population ratio		Unemployment Rate	
COUNTRY	ALL	WOMEN	ALL	WOMEN	ALL	WOMEN
Kosovo	40.5	21.1	28.4	12.9	30.0	38.8
EU 28	71.8	65.6	64.1	58.5	10.5	10.5
Albania	61.3	50.1	50.5	42.7	17.7	14.7
FYR Macedonia	63.9	50.8	44.0	35.3	31.2	30.5
Serbia	60.4	50.7	46.4	38.3	23.1	24.3
Montenegro	59.0	52.1	47.4	41.5	19.7	20.4
Bosnia & Herzegovina	43.6	32.5	31.6	23.0	27.5	29.0

Kosovo Agency of Statistics. 2014. "Results of the Kosovo 2013 Labor Force Survey." Pristina, Kosovo: Kosovo Agency of Statistics, p. 26.

In a 2013 survey, of 195 of 936 farmers participating in the New Opportunities in Agriculture (NOA) Program, 34% of farmers surveyed had their farms registered as a business, with only 6% of farms listed under a woman's name and none of the assets (livestock, equipment, etc.) of any farm noted as the possessions of a woman (New Opportunities for Agriculture 2014). What we see in this survey is typical of what we see across Kosovo, low formalization of property rights across the board and an even lower formalization of women's property rights. We know that in rural households women are key actors in the household economy. Indeed, in the same survey 95% of women were engaged daily in agricultural activities and 78% of women reported having input in household investment decisions. However, culturally determined power dynamics within families mean that the labor and other human capital women contribute to the rural household are not reflected in their ownership of assets. Turning the informal labor and decision-making roles that women play in agriculture into more formalized ownership will take behavioral and cultural change.

Women's engagement in agricultural activity is of particular concern due to the focus of a number of external actors, including the World Bank, the EU, and USAID, on the agricultural sector as a key area of future economic growth. In this context, if the New Opportunities for Agriculture survey represents the reality in agricultural households, then the absence of women's formal capital ownership of necessary inputs is of concern as women's ability to fully participate in and gain from economic growth is limited.

Outside of the agricultural sector, women's business opportunities do not appear to be much better. The Kosovo Labor Force Survey of 2013 shows low rates of women's engagement in the labor force and high unemployment of women (Kosovo Agency of Statistics, 2014b), the Kosovo Agency For Statistics reports the male unemployment rate at 26.9% and the female rate at 38.8% (see also Table 2 above). This is somewhat surprising as women are well-represented in the educational system. Indeed, while only 41.8% of upper secondary students are female, women make up 51.2% of university students in public and private universities (Kosovo Agency of Statistics, 2014a). Thus, educational level is not an adequate explanation for the disproportionate unemployment rate of women.

Given the levels of unemployment overall, and the higher levels for women identified in Table 2, opportunities for women to start their own businesses and, in effect, create their own employment, are critical. Impediments to their access to capital evident in the inheritance process are therefore particularly problematic. Without capital assets in their own names women will have a great deal of difficulty securing loans to either start or supplement their business activities. Additionally, the lack of formalization of property rights for women in rural areas where the economic opportunities lie primarily in agriculture can prevent women from reaping the benefit of their own labor.

In 2014 the Property Rights Program ran a series of workshops jointly with Crimson Finance Fund to reach women business owners and inform them about their opportunities to access loans and their legal rights to property. Surveys of the women business owners attending these meetings give a snapshot of the problems that a lack of capital creates for women. At one well-attended workshop in Peja, 81 women filled out surveys about their businesses. Of the women who filled out the surveys, 60 (74%) reported running their business themselves. Only 17 women reported owning immovable property (21%) with 14 of those reporting that the property of the business was listed in their names or the name of the company. Only six of the women business owners (7%) reported inheriting property. These numbers are consistent with the overall narrative regarding women's property ownership in Kosovo.

It is interesting to note further that 48 of the 81 women (59%) had received a bank loan at some point to help with their businesses. This surprising figure suggests that though the women might not be inheriting property from their families, they were able to establish a sufficient track record in their business or develop enough assets to qualify for a bank loan. Many of the women attending the workshop expressed interest in low-interest loans to increase inventory, allow them to hire seasonal labor, or enable them to move into different product lines. The vast majority of the businesses women owned were in the retail and service sectors with only six women identifying agriculture related businesses and nine in manufacturing.

Given the low level of women's engagement in the economy overall, the women attending the workshop cannot be viewed to be representative of the population as a whole. However, the workshop surveys do illustrate two issues of note: 1) women are starting businesses that require low or no capital inputs in terms of property; 2) some women are doing business and creating capital assets that are not held in their names. Tackling the first issue is a struggle in a context in which loans are hard to come by without a high collateral or security guarantee. The second issue is altogether different. Women engaged in economic activity, indeed entrepreneurial economic activity, are doing so without formal control over the assets they are using or the capital they are creating. This can be addressed by encouraging them to formalize control over their own assets.

5.1 MINORITY POPULATIONS

While ethnically Albanians are the vast majority of the population of Kosovo, there are also minority populations of Serbs, Roma, Ashkali, Egyptians, Turks, and Bosniaks, There is information from municipal cadastral offices that demonstrates higher rates of women's property ownership in Serbian areas of the country. However, unemployment for Serbian women remains a problem and it is not clear that higher rates of property ownership are translating into better overall economic well-being for women.

With regard to other minority populations such as the Roma, Ashkali, and Egyptian populations, there is very little known about women's property issues and economic engagement. Some studies have shown that property issues are a problem in Roma communities generally (Voicu and Popescu, 2009), but it is unclear whether the issues are similar in Kosovo and how they pertain to women. Further investigation is needed to identify whether women in these minority populations have specific problems related to property and inheritance rights.

6.0 RECOMMENDATIONS

The following recommendations and activities follow from the overview above which is a result of a desk review of laws and existing literature regarding property rights issues in Kosovo, combined with interviews and legal process mapping. The recommendations are divided into four different categories: law and court processes, training and capacity building in municipal administration, economic engagement for women, and information gathering.

6.1 LAW AND COURT PROCESS

1. ***Exclusion of female heirs in inheritance processes/coerced renunciation of rights.*** Women and men should be fully informed of the legality and importance of including female heirs. If women wish to renounce their rights, provisions must be made to ensure this is voluntary. Judicial proceedings relating to women's property and inheritance rights need to be handled in a legal, timely, and fair manner. It would be inadvisable to get rid of renunciation entirely because it would encourage further informality of property rights and push people away from following an inheritance process in the legal system. Since women face a much better chance of inheriting if there is a legal process following the death of a family member, it would be better to encourage legal inheritance even knowing that people may try and get around it in various ways. Additionally, eliminating renunciation entirely would prevent the possibility of people renouncing their inheritance to property that would be onerous to them.

Recommend:

- a. Conduct an analysis on the appropriateness of adding procedural barriers to the rights of renunciation of inheritance rights for women.
- b. Support legislative change to ensure that any renunciation of inheritance rights by women includes 1) voluntary consent; 2) legal representation; 3) full financial disclosure; and 4) documentation in conspicuous, plain language of the financial impact of renunciation. Since full financial disclosure should be made clear through the legal process of inheritance, there is most room for change in the other areas.
- c. Conduct a comparative study of the timing of court cases from instigation to final conclusion comparing three specific groups of cases: those addressing inheritance in which women claim their full rights; those addressing inheritance in which there are no female heirs; and those that pertain to property issues more generally. The goal of the study would be to see whether inheritance cases generally, and women's inheritance cases more specifically, are being handled in a disproportionately slow manner in the courts. This information could then be used to structure specific interventions, such as court monitoring, which would be designed to overcome the time delays. If a full comparative study is not desired, this could possibly be a smaller study that a community organization could complete with a more limited research design.
- d. Court monitoring of specific contested cases of women's inheritance in several courts to determine where delays are occurring and what problems are evident in individual cases. It would additionally be helpful to compare some of recent high-profile cases to some that have received less press attention. This could be done by a community organization through an Engagement for Equity (E4E) grant.

- e. Provide/encourage legal aid services targeting women in inheritance proceedings and property registration.
 - f. Conduct an awareness campaign through the E4E program targeted at men to emphasize the benefits of including daughters and wives in inheritance. Emphasis should be put on developing strong families and the economic benefits of women’s engagement on the economy.
 - g. Provide training to municipal gender officers, local notaries, and court officials with regard to Kosovo laws and inheritance processes. Develop resources guiding notaries and court officials through the process and educational posters and other resources for citizens.
 - h. Equip municipal gender officers to lead trainings on the law regarding inheritance in rural areas of Kosovo where knowledge appears to be more limited.
 - i. Address information sharing issues at the municipality level which prevent the identification of female heirs. See further recommendations under point 7 below.
 - j. Engage CSOs in educational activities around the issues of voluntary consent and legal representation. Some of the existing research suggests that many women do not know that they have an option to inherit or that the law is actually in their favor (Vuniqi and Halimi, 2011). This is an area in which E4E activities could help tremendously, particularly in rural areas. Community organizations would be particularly well-suited to framing this issue in a way that would not be seen as threatening to families. This type of CSO activity might also be linked with developing inclusive narratives for inheritance as noted in recommendation 14. There is an additional possibility of E4E engagement in the area of legal representation. Community organizations could engage in training and informational activities to communicate how women might access legal representation for inheritance issues in their locality– through legal aid and otherwise. It might be very helpful to have a list of lawyers who have handled women’s inheritance cases and legal aid resources for inheritance cases compiled at the municipality level or by region. This could then be distributed through workshops and to municipal gender officers or other interested parties.
2. ***Exclusion of minor children from inheritance.*** Minor children in Kosovo have insufficient property protections. The Inheritance Law article 130.3 allows for the renunciation of the rights of minor children with no custodial oversight. The rights of minor children, particularly female children, need to be protected, given the cultural norm of exclusion. These are concerns for the minor children of heirs who are excluded from inheritance processes, as well as for children whose parents or guardians are included in the inheritance proceedings, but choose to renounce the rights of their children.

Recommend:

- a. Support legal change to provide custodial oversight of renunciation cases involving minor children. Any renunciation of inheritance rights of minors should be heard before a court and not a notary to allow for oversight.
- b. Prepare a concept paper with a full assessment of this issue, including an analysis of the correspondence of the Inheritance Law with The Charter on Fundamental Rights of the European Union. Article 24(2) of the Charter notes that “In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.” The EU recognizes children as autonomous and independent holders of rights.
- c. Organize a roundtable conversation on this issue with representatives from the MOJ, OSCE, EU, and other interested parties. Share concept paper with them and coordinate activities. Develop recommendations for legal change consistent with The Charter on Fundamental Rights.

3. ***Informal property rights.*** Families choose not to formalize their property holdings because of culture, expense, or a lack of awareness of the benefits. This can prevent any formal transition of property between generations upon the death of a property owner. If a family does not engage in any process of formally transferring property from one generation to the next then there will effectively be no recognized heirs which impacts the ability of both male and female heirs to access capital.

Recommend:

- a. Promote, in public education of both men and women, the benefits of formalized property and encouraging the formal transfer of property after death.
 - b. Develop resources such as pamphlets and posters that present in an accurate, step-wise fashion, the specific process of property registration with an identification of fees and documents needed.
 - c. Encourage the making of wills. This allows families to discuss in advance how property will be divided between male and female heirs and if there is a desire to keep family property in the male line, families can then make adequate provision for surviving female spouses and other female heirs. Encouraging will making will be difficult and may not lead to immediate change. The issue of will making is not faced by Kosovo alone. There are many countries in which it is not habitual to make wills and the absence of wills is used to exclude women from inheritance. Though success may be limited, it is worth the effort to support BCC activities by CSOs to change attitudes and behaviors about will making and incorporate this into discussions and trainings wherever possible.
 - d. Engage CSOs in a variety of educational/information activities to address informal property rights. Efforts should be made to target rural communities as well as large population centers.
4. ***The role of notaries in inheritance processes.*** Notaries play an important role in Kosovo in uncontested inheritance cases. Their ability to convey appropriate legal information to their clients is extremely important and the professional conduct of notaries is essential to their effective role in the legal system in Kosovo. The goal of this recommendation is to clarify and unify the process for handling uncontested inheritance cases so that any materials that are made, or guidance that is given is accurate. Currently there is variation in how uncontested inheritance cases are handled in different parts of the country.

Recommend:

- a. Engage the MOJ, Kosovo Judicial Council, and the Chamber of Notaries in a discussion regarding mechanisms to address the legal gap in process that should be followed in inheritance cases—specifically whether inheritance cases can be heard before a court or a notary.
- b. Develop legislation to address any legal gaps creating confusion about the jurisdiction of courts and notaries over inheritance cases.
- c. Provide legal counsel to women and other vulnerable populations in inheritance cases heard before notaries, consistent with point 1(a) above.
- d. Coordinate workshops across different municipalities providing training for notaries in the appropriate legal processes for inheritance cases based on the results of the discussions recommended in point a above. Promote specific training for notaries regarding the illegal exclusion of any compulsory heir in testamentary and intestate estates.
- e. Develop written guidance to be given to notaries dealing with inheritance cases.

5. ***Communication of court processes.*** Issues of notification of court hearings and the adequate communication to the interested parties is one area where women and other heirs can be excluded from inheritance cases. Addressing these issues will improve the functioning of the courts and the inclusion of women in property cases.

Recommend:

- a. Require better identification of interested parties through coordination with municipal civil registry offices.
 - b. Train court officers regarding proper and appropriate issuing of summons to interested parties.
 - c. Investigate alternative processes for service of process (notification of parties) given the absence of a street address system in much of Kosovo.
6. ***Inconsistencies in law regarding marriages.*** The Inheritance Law and the Family Law have very different provisions regarding their recognition of “factual” marriages.” The differences have a potentially significant negative impact on surviving factual spouses, male and female, as well as surviving children.

Recommend:

- a. Promote legislative change to address any gaps and bring the Inheritance Law and Family Law into alignment.
- b. Develop an outreach campaign to encourage legally registered marriages. Visuals to be placed at municipal registry offices. Engage religious leaders or others who may be involved in wedding ceremonies in conversation/training on the benefits of registering marriages.
- c. Hold a roundtable on this issue with the women parliamentarian group, which may have a particular interest in the issue, to raise awareness and promote legal change.

6.2 TRAINING AND CAPACITY BUILDING ACTIVITIES

1. ***Access to the Civil Registry.*** The municipal registries have been up to date since 2013 when the civil registry verification project with Serbia was completed. It is now possible for all citizens to access accurate records. Municipal officials should be able to access family records and create a death certificate with all legal heirs listed and then complete a correct Act of Death, yet this continues to be a significant problem. The mechanisms for insuring a listing of all legal heirs are located in the Municipal Registry Offices. The recommendations below are designed to address this critical informational problem. Accurate property record-keeping and transfer is contingent upon access to an accurate civil registry.

Recommend:

- a. Assess the civil registry issue and identify where, precisely, the best and most efficient interventions could occur. Address usage processes of municipality officials issuing death certificates and impediments to their immediate access to the civil registries for the identification/verification of legal heirs. Examine the record storage issue, specifically for Pristina. Are the same issues present in other large municipalities? Investigate practices in civil registry use/operations in several rural municipalities to assess whether similar issues are present there or whether the problem is capacity in larger municipalities.
- b. Digitize the paper civil registry records transferred from Serbia for easier access. Coordinate with DANIDA and other donors who funded the initial project.

- c. Develop strategies for the coordination of the civil registry with property registry in the Municipal Cadastral offices.

2. ***Underused Municipal Gender Officers.*** Municipal gender officers are low-profile, poorly integrated municipal resources. They do not have adequate funding for activities and are often not visible in the municipality offices. They have the potential to be used strategically to benefit women's property and inheritance issues, as well as women's overall economic integration if they were more visible as well as better trained and funded.

Recommend:

- a. Advocate for more visibility for municipal gender officers within municipality offices. Promote/provide signage as to the location of their offices.
- b. Ensure trainings that occur with municipal courts, cadastral offices, or civil registries include the municipal gender officers, so they may be made aware of the correct practices and become better integrated into the workings of the municipality. Municipal gender officers are available resources and care about gender-related issues. Incorporating them into municipal trainings is designed to increase their profile and capacity as resources and advocates after this project ends. CSOs should be encouraged to work with municipal gender officers whenever possible.
- c. Equip and fund municipal gender officers to provide training/informational workshops in rural areas for men and women on law related to appropriate inheritance processes and will making.
- d. Hold a workshop for all municipal gender officers on joint titling of marital property and make them aware of new cadastral office processes regarding lower fees for joint titling of property. Use this event to have them share best practices regarding interventions on property and economic engagement for women. Evaluate inclusion of other relevant stakeholders such as the Ministry of Local Government Administration.

3. ***Inconsistent Municipal Cadastral Office (MCO) processes.*** Property registration and secure ownership for all citizens of Kosovo will be augmented by a regularization and consistency of property registration and transfer processes across all municipalities.

Recommend:

- a. Develop a strategy to resolve the accountability issue for MCOs and their precise relationship to the governance structure of the municipality.
- b. Create posters and other visual materials that would guide both MCOs and citizens using the services of the MCOs. Posters have been used effectively in other settings around the world to encourage property registration. They provide information in a different format, prevent the need to wait in line to see an official to get information about the next step in the process, and will outlast this project in their use and impact. They can also achieve multiple purposes, for example, by showing women engaged in the process of property registration.
- c. Collaborate with the Council of Notaries to create consistent practices for notaries in dealing with property division, develop a case book, written materials or online resource around this strategy. Consider holding a joint training seminar with the Council of Notaries and MCOs or municipal workshops which bring the two groups together to develop consistent standards of practice. Seminars and informational materials will address the discrepancies in the practice of notaries across different municipalities.

- d. Use E4E funds perhaps to fund different graphic design projects for materials with criteria set by PRP. Multiple grants might be considered with the idea of taking the best outcome and using it for distribution across the country.

6.3 ECONOMIC ENGAGEMENT OF WOMEN

1. *Barriers to women's economic engagement.* One of the reasons that secure property rights are beneficial is because they can facilitate access to capital and control over resources. Women's lack of formal property rights in Kosovo is an impediment to their full activity as economic actors. Men and families benefit from women's economic empowerment through increased income and improvements in child nutrition. While not every woman will become an entrepreneur, eliminating the existing barriers to their control over capital will facilitate greater engagement for women in economic activity at every level.

Recommend:

- a. Develop materials targeted at women around issues of business registration and ensuring that the capital resources of businesses they own, or contribute to, are in their names. Perhaps develop a flyer that has on one side the process of business registration and on the other an encouragement for women to register it in their names.
 - b. Encourage will making for women entrepreneurs and business owners so that they can 1) control the assets they develop in their lifetime, and 2) provide for minor children in the case of their death.
 - c. Augment the workshops Crimson Capital is currently running, which address access to credit for women-owned businesses. Add component on the importance of business registration in women's names and ensuring any capital assets of the business are registered in the names of women.
 - d. Provide grant opportunities for lawyers/firms to assist in the formalization of women's businesses and business assets. Alternatively, engage local lawyers/firms/NGOs to provide informational workshops on the formalization of business assets for women.
2. *Specific challenges to women in the agricultural sector.* Women engaged in agriculture on family farms contribute significantly to the economic well-being of the household economic enterprise through their labor and management. With the increased focus on the agricultural sector as a key area for growth, moving women engaged in agriculture on family farms from informal contributors to fully invested partners would increase their well-being and formalize the benefits they receive from their efforts. Moreover, closing the gender gap in agriculture would increase agriculture productivity, reduce poverty and hunger and promote growth (FAO, 2011: 3). Sharing these positive benefits of women's engagement in the agricultural sector with men should be a part of this strategy.

Recommend:

- a. Engage women farmers in focus groups regarding their agricultural inputs and where they might benefit from an increased formalization of their property. For example, is control over land important to them? Might they benefit more from control over other farm assets, such as livestock? Would women farmers benefit from the formation of cooperatives where they could make individual labor investments and own shares in their own names? Control over non-land assets in agricultural households (livestock, equipment, etc.), has been an effective means of engaging women economically in other settings.
- b. Engage men in educational activities to promote their understanding of the overall benefits of women's property ownership for their families as a whole and specifically for child nutrition and

well-being. Coordinate where possible with other programs to take advantage of existing producer groups or cooperatives.

- c. Assess the specific challenges of rural property registration overall and specifically for women to augment anecdotal reports of fears of farm fragmentation and loss of agricultural land. Coordinate with agricultural programs led by USAID, EU, and others to see if there is a possibility of working through existing projects to collect information on land ownership, titling and women's engagement in farm activities.
- d. Engage in public relations activities which focus on the role of women in farm families as important economic actors and decision-makers, rather than informal, unpaid labor.
- e. Create small grant opportunities for livestock or equipment purchases for women in agriculture or women's agricultural cooperatives - things like canning, pasteurization, or fermentation equipment. These grant opportunities should be based on information collected in focus groups in point a above. Ensure that any assets purchased or developed are held in women's names and proceeds controlled by them; tie in legal informational workshops.
- f. Partner with a CSO to run a competition designed to promote a "Kosovo model farming household" based on the model farmer method, but emphasizing women's role in agriculture and household income-generating processes.

6.4 KNOWLEDGE-BUILDING ACTIVITIES

1. *Lack of information regarding factual marriages.* There is clearly a problem in terms of the consistency of the Family Law and the Inheritance Law regarding factual marriages. They are also quite common in Kosovo. In other settings informal marriages have had major impacts on women's economic engagement and property rights (Hallward-Driemeier and Hasan, 2013).

Recommend:

- a. Assess the full property implications of factual vs. legally registered marriages. Identify how factual marriages are being handled by the courts and notaries in inheritance cases, which law is followed.
 - b. Identify any property impacts on minors of factual vs registered marriages.
 - c. Develop a strategy for engaging this issue/ coordinate with suggested activities from point 6 above.
2. *Lack of information regarding property concerns of women in minority populations.* There is little research or data available on the property concerns of women in minority populations. Assumptions about the issues of Serbian women are made based on limited data and there is a particular absence of information regarding the property concerns of women in the Roma, Ashkali, and Egyptian populations despite the fact that property issues for these minority populations are a major concern of the EU. Further information would be welcome to ascertain if the interventions proposed here would be appropriate as they stand or would need to be modified in order to meet the needs of these women.

Recommend:

- a. Develop an assessment of the property issues of minority community women.
- b. Conduct a needs assessment of existing property concerns of women in the Roma, Ashkali, and Egyptian communities. Assess consistency of policy in Kosovo with the European Council

recommendation of 9 December 2013 on “Effective Roma integration measures in the Member States.”

- c. Address whether stereotypes of Serb women having greater access to property are accurate and whether this leads to their greater economic engagement. Attention to Serb women in rural areas and engaged in agriculture would be particularly helpful.
 - d. Identify to what extent interventions targeted at the majority Albanian population would need to be changed to address the needs of minority women.
 - e. Use grants to collaborate with CSOs to identify property concerns of minority women. Organizations could be coordinated by the PRP to ensure consistency in assessment of women’s property concerns in the areas of inheritance, economic engagement, and divorce. It is additionally important to ensure urban and rural representation of Serbs and among Roma, Ashkali, and Egyptian that are living inside and outside of camps/resettlement communities.
3. *Absence of positive narratives around women’s property rights.* Women’s inheritance is a highly contentious issue in Kosovo. Women who ask for their share of the inheritance are often treated badly by their families and are viewed to be exhibiting selfish behavior. At the same time, many families are developing new ways of sharing family resources that include women and are sensitive to Albanian cultural values.

Recommend:

- a. Gather examples of property sharing among siblings that adhere to Albanian family norms without excluding women. Ensure that there are sufficient rural and urban variations to account for the varied livelihoods in Kosovo.
- b. Engage a group of female economists, lawyers, and parliamentarians in Kosovo around the issue of inheritance and develop strategies for culturally appropriate property sharing.
- c. Develop publicity campaign targeting men, around different strategies for inclusive inheritance.
- d. Create small grant opportunities, targeting university students, to articulate culturally embedded and egalitarian inheritance narratives. Grant opportunities should be made available to professors, student organizations, or programs. The goal is to engage students in collecting the best examples of “Traditional Values in a Modern World: Creating the best society” or some other similar topic that addresses culture inheritance, and equality. Encourage the use of multimedia—films, photos, recorded interviews, etc. Consider getting UP or AUK to host an exhibition of final projects to raise the public profile of the project.

WORKS CITED

- Advocacy Training and Resource Center. 2014. "Findings and Recommendations of Local Organizations from Court Monitoring Activities." Pristina, Kosovo: USAID.
- Beale, Carlos. 2014. "Assessment of Real Property Transactions and G2G Activities." Pristina, Kosovo: USAID.
- Bonfiglioli, Chiara. 2013. *Becoming Citizens: The politics of women's emancipation in socialist Yugoslavia* (October 24, 2012). Citizenship in Southeastern Europe 2012 [cited February 8 2013]. Available from <http://www.citsee.eu/citsee-story/becoming-citizens-politics-women%E2%80%99s-emancipation-socialist-yugoslavia>.
- Council of Europe. 2009. "Council of Europe Family Policy Database." Council of Europe.
- Dean, Bob. 2014. "Preliminary Assessment on the Adjudication of Property Cases in Kosovo Courts." USAID/Kosovo Property Rights Program.
- Draft Law on Protection Against Discrimination. 2014. ed. Republic of Kosovo. Pristina: Republic of Kosovo.
- FAO. 2011. "Women in Agriculture: Closing the gender gap for development." In *The State of Food and Agriculture*. Rome: Food and Agriculture Organization of the United Nations.
- Fox, Leonard. 1989. *Kanuni I Lekë Dukagjini = The Code of Lekë Dukagjini*. Translated by L. Fox. New York: Gjonlekaj Publishing Company.
- Gashi, Jeta Abazi. 2014. "Fighting for their Fair Share." *Balkan Insight* (18 November 2014).
- Hallward-Driemeier, Mary, and Tazeen Hasan. 2013. *Empowering Women: Legal Rights and Opportunities in Africa*. Washington, DC: International Bank for Reconstruction and Development.
- Hasanaj, Qazim. 2013. "Axbhallarët nuk ia Japin Pasurinë e Babait." In *Jeta Në Kosovë*. Pristina, Kosovo.
- . 2014. "Këngëtarja Safete Mustafa, me e madhja e Motrave Mustafa padit vjehrrën dhe kunetërit." Pristina, Kosovo: Indeksonline.
- Joireman, Sandra. 2013. "Securing Property Rights for Women (and Men) in Kosovo." In *World Bank Land and Poverty Conference*. Washington, DC.
- Joireman, Sandra F. 2015. "Resigning their Rights? Impediments to Women's Property Ownership in Kosovo." In *Global Trends in Land Tenure Reforms: Gender Impacts*, ed. C. Archambault and A. Zoomers. New York: Routledge.
- Kaliqi, Drita. 2014. Interview. Gjilan, Dec 12.
- Kosovo Agency of Statistics. 2014a. "Education Statistics 2012/2013." In *Social Statistics*. Pristina: Republic of Kosovo.
- . 2014b. "Results of the Kosovo 2013 Labour Force Survey." Pristina, Kosovo: Kosovo Agency of Statistics.

- Kostanica, Merita. 2014. Interview. Pristina, December 11.
- Law on Contested Procedure. 2008. In *2009/03-L-006*, ed. R. o. K. Assembly. Pristina: Republic of Kosovo.
- Law on Notary. 2008. In *Law No. 03/L-10*, ed. A. o. Kosovo. Pristina: Government of Kosovo.
- Law on Property Rights and Other Real Rights. 2009. *Law No. 03/L-154*, ed. A. o. Kosovo. Pristina: Government of Kosovo.
- Muhamet Brajshori, Menekse Tokyay, and Ivana Jovanovic. 2012. "Women struggle to have equal access to property." *Southeast European Times*, December 18, 2012, 1.
- New Opportunities for Agriculture. 2014. "Women's Empowerment Index Report." Pristina, Kosovo: Tetra Tech/USAID.
- Open Society Foundations. 2014. "Securing Women's Land and Property Rights: A Critical Step to Address HIV, Violence, and Food Security." Open Society Institute.
- Provisional Institutions of Self Government. 2004a. "Family Law of Kosovo." In *2004/32*, ed. A. o. Kosovo. Pristina, Kosovo: United Nations Interim Administration Mission in Kosovo.
- . 2004b. "The Law on Gender Equality in Kosovo." In *2004/2*, ed. A. o. t. R. o. Kosovo. Pristina, Kosovo: United Nations Interim Administration Mission in Kosovo.
- . 2004c. "Law on Inheritance in Kosovo." In *2004/26*, ed. A. o. Kosovo. Pristina, Kosovo: United Nations Interim Administration Mission in Kosovo.
- Ramadani, Nehat. 2014. Interview with Municipality Specialist USAID Property Rights Project. Pristina, December 9.
- Shapo, Helene S. 1993. "A Tale of Two Systems: Anglo-American Problems in the Modernization of Inheritance Legislation." *Tennessee Law Review* 60:707-.
- Voicu, Malina, and Raluca Popescu. 2009. "Roma women- known and unknown: Family Life And The Position Of The Woman In The Roma Communities." European Network on Social Inclusion and Roma
- Vuniqi, Luljeta, and Sibel Halimi. 2011. "Women's Property Inheritance Rights in Kosovo." Pristina, Kosovo: Kosovar for Gender Studies Center.

U.S. Agency for International Development

1300 Pennsylvania Avenue, NW

Washington, DC 20523

Tel: (202) 712-0000

Fax: (202) 216-3524

www.usaid.gov