



**REDESIGNING PROCEDURES TO ENCOURAGE LEGAL RECOGNITION OF
INFORMAL RELATIONS TO PROPERTY:**

CHALLENGES POSED BY INFORMAL INHERITANCE IN KOSOVO

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**Paper prepared for presentation at the
“2018 WORLD BANK CONFERENCE ON LAND AND POVERTY”
The World Bank - Washington DC, March 19-23, 2018**

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Abstract

This paper examines “informal inheritance” cases when de facto owners do not initiate formal inheritance proceedings. Delays in initiating inheritance proceedings, and the growing number of claimants spanning several generations of heirs as a result—many of whom live outside of Kosovo—creates further difficulties to formalize property ownership. The resulting discrepancy between cadastral records and informal ownership contributes to tenure insecurity. The USAID Property Rights Program has assisted the Government of Kosovo to amend the laws on inheritance, notaries, and uncontested procedure to provide an efficient mechanism to initiate inheritance claims, and expedite inheritance proceedings initiated many years after the death of the right holder. The legislation also introduces due process safeguards to protect the rights of women and children. This paper analyzes factors that have exacerbated the discrepancy between cadastral records and informal ownership and, subsequently, examines the recent legislation introduced to expedite recognition of rights that may then be registered in the cadastre.

Key Words:

Informality; Inheritance; Notaries; Courts; Efficiency; Due Process; Notice; Cadastral Registration; Women’s Property Rights

1. Introduction

This paper examines “informal inheritance” cases when the property of a deceased right holder is possessed by *bona fide* heirs who did not initiate and complete formal inheritance proceedings, preventing registration of their rights in the cadastre. When inheritance proceedings are initiated many years after death (“delayed inheritance proceedings”), the large number of claimants spanning several generations of heirs, many of whom live outside of Kosovo, creates further difficulties in formalizing ownership rights in immovable property. The resulting discrepancy between Kosovo’s cadastral records and informal ownership of immovable property contributes to tenure insecurity. Without initiation and completion of inheritance proceedings, property in an extralegal context is a dead capital that cannot be transacted in the property market (de Soto, 2000). In Kosovo’s patrilineal social context, informal relations to property place women in an even more vulnerable position than they are in already.

Driven by evidence-based research, Kosovo’s National Strategy on Property Rights (hereinafter, the National Strategy) introduces policy measures to encourage timely initiation of inheritance proceedings, and to address the large body of accumulated, delayed inheritance cases, identifying them as a major source of informality (NSPR, 2017). Timely or delayed inheritance proceedings are distinguished by the length of time that has elapsed from the occurrence of death until the initiation of proceedings. Guided by the National Strategy, the Government of Kosovo, with the technical assistance of the USAID Kosovo Property Rights Program (PRP), recently amended the laws on inheritance, notaries, and uncontested procedure (hereinafter, the Inheritance Package) to provide an efficient mechanism to encourage timely initiation of inheritance claims, as well as finalize delayed inheritance proceedings in an expedited manner. In addition to increasing efficiency, the amended legislation also introduces due process safeguards to protect the rights of citizens in a vulnerable position, including women and children. This paper analyzes factors that exacerbated the discrepancy between cadastral records and informal ownership and, subsequently, examines recent legislation introduced to expedite recognition of rights that may then be registered in the cadastre.

2. The Context Behind Widespread Informal Inheritance

A national survey conducted by USAID PRP in 2015 found that the birth family of 57% respondents had never initiated inheritance proceedings to transfer rights in property. During the process of reconstruction of cadastral zones after the conflict in Kosovo, the World Bank found that approximately 30% of land holders could not register rights because the land remained registered in the name of deceased right holders. Similarly, approximately half of applicants that went through the process of legalizing constructions built without a permit were subsequently prevented from registering their construction in the cadastre because the land upon which the building was constructed was registered in the name of deceased right holders (NSPR, 2017). A broad understanding among Kosovars persists that informal rights based on possession of family property have equivalent legal effect as rights based on a court decision or formalized sales contract (USAID PRP, 2015).

When large scale informality is coupled with patrilineal values that shape family attitudes and expectations from women, women are further prevented from inheriting property. According to USAID PRP's national study, only 3.8% percent of women have inherited property from their parents. The percentage of women that informally inherited property is even lower, given that only 28% of respondents went through any formalized inheritance process. 45% women that went through formal inheritance proceedings renounced their inheritance, as compared with only 6% of men (USAID PRP, 2015). In cases of informal inheritance, women are not even given the opportunity to renounce their legally guaranteed rights. The extralegal practice further prevents women from using legal institutions to claim their property rights.

Dominant land governance frameworks installed in Kosovo provide an explanatory context for the emergence of informal inheritance transactions and the domination of customary law over civil law. The Ottoman Land Code, followed by the Socialist legal regime, and then the discriminatory legislation introduced in the 1990s fell short of both offering tenure security and promoting equal exercise of property rights. The void instead was occupied by customary law, which favored the patrilineal family unit, rather than the state, as the primary institution for protecting and allocating property rights among family members.

For over five centuries, Kosovo was governed by the Ottoman land code. Cultivating the land and paying a property usage tax to the Empire determined the maintenance of the usufruct of the land among family members, from one generation to next. Provided that the land registry was designed to promote effective tax collection for the Empire, rather than tenure security for and equality among its subjects, it was in the discretionary power of the family unit to determine how land was to be allocated among heirs. Conditions for continued usage of land—cultivating land and paying tax, rather than instilling a formal

procedure for the division of wealth among heirs—encouraged patrilineal inheritance of land and family landownership as the primary way of securing family subsistence. The Ottoman land governance structure, therefore, was designed to coexist in a symbiotic relationship with a wide array of customary practices, observed among different ethnic groups inhabiting the Ottoman Empire, that were used for division of wealth (Kark, 1997; Lewis, 1979; Minkov, 2000; Shaw, 1975).

Only in the second half of the 19th century did Ottoman territories undergo a systematic land reform program, marked by the Ottoman Land Code of 1858. The reform, however, was underpinned by improved tax collection efforts rather than security of tenure (Minkov, 2000). The Ottoman land tenure system was organized through *Tapus*, ottoman title deeds, which translates into homage or service (Lewis, 1979). Family-oriented inheritance norms and beliefs, which determined the title holder within a family, did not threaten the reform’s main purpose of improving tax collection. While a registry of title holders was set in place, establishing a formal chain of title remained a challenge because, before the Ottoman Land Code of 1858, title deeds were held in “private hands or in small collections in villages,” rather than in a formal registry office (Minkov, 2000). A copy of the old *Tapu* used to be replaced with a copy of a new *Tapu*, which sufficed to identify a family representative as a tax contributor. The reform’s focus on tax collection, rather than on improvement of security of tenure, contributed to the emergence of a “customary-family tenure system;”¹ this was perceived as a more secure way of passing along property to future generations (Wheeler, 1998).

Unlike the *Tapu* system, Kosovo’s subsequent dominant land reform under Yugoslavia, led to the establishment of a complete cadastre and land registration system. Driven by ideological bias, however, “force was an element in the land reform,” contributing to the unpopularity of the reform (Klein & Klein, 1979). The existence of *Tapus*, including up-to-date *Tapu* title deeds held by right holders, did not prevent the state from confiscating and nationalizing private land on behalf of the larger socialist project. In parallel to collectivization efforts, a systematic formalization initiative was launched to register all plots of land, including private property. Only 57% of property remained private, comprised of private single-family homes outside urban areas, on the one hand, and socially-owned apartments in urban areas with permanent occupancy rights, on the other (HPCC, 2007). Building an updated cadastral registry, with title holders assigned to all plots of land and immovable property in the territory of Kosovo, was a promising formalization project. However, it unfolded as a one-time capture of rights, which were subsequently informally transferred to heirs (Keefe & Salihu, 2017). The regime’s unpopular land reform failed to

¹ This term has been originally used in the context of Albania, rather than Kosovo. In this paper’s context it is used as a proxy for Kosovo provided that 95% of Kosovo’s population is ethnically Albanian, both countries were under the Ottoman Empire, and both countries were governed by a socialist regime.

establish formal chains of title that would be continuously updated. Property transactions outside the cadastre persisted after the socialist formalization project, reverting to informality.

The prevailing culture of distrust in state institutions further erupted with the discriminatory legislation introduced by the regime of the Serb state, as a successor of Yugoslavia, in the 1990s. The discriminatory legislation prohibited inter-ethnic sales of immovable property and was applicable until the conflict ended in 1999 (HPCC, 2007). The legislation, however, did not prevent citizens from informally transacting land, instilling a fertile ground for expansive informality in the land sector. Land purchased in the absence of a contract was subsequently informally inherited, further cementing the dominance of customary law over civil law. Today, owing to the displacement of people as a result of the conflict, formalizing rights falling into this category of cases poses a great challenge.

Following NATO's military intervention in 1999, the conflict in Kosovo ended. Kosovo was placed under UN Administration with executive powers to create and abrogate laws. Following UN Administration, in 2008, Kosovo declared independence from Serbia, bringing along a new legal framework. Kosovo's current legal framework on immovable property derives from different political systems, starting from Yugoslavia to the United Nations Interim Administration Mission in Kosovo, and to the Republic of Kosovo. The convoluted legal framework preceding the Inheritance Package does not encourage timely initiation of inheritance proceedings to acquire and secure rights to property.

3. The Practice of Initiating Inheritance Proceedings Before the Inheritance Package

Addressing informal inheritance is a matter of enforcing rights to inheritance enshrined in Kosovo's Law on Inheritance, which follows European civil law practice. However, this is a challenge of implementing the procedural rather than the substantive law. Dual jurisdiction of courts and notaries to process uncontested inheritance claims, fees to initiate inheritance proceedings, and lack of procedural safeguards to ensure that inheritance proceedings are free from pressure exacerbate further culturally influenced informal inheritance. Procedure to formalize rights acquired through informal inheritance is especially cumbersome for citizens when inheritance proceedings are initiated many years after the death. The growing number of claimants involving several generation of heirs, often scattered in the diaspora far from Kosovo, is a further disincentive to formalize ownership.

Challenges emerge with the issuance of the Act of Death, the first ring in the chain of inheritance proceedings. The Act of Death lists all eligible parties to participate in inheritance proceedings. However, because it is a testimonial document, the Act of Death provides an opportunity to conceal heirs, especially women (Joireman, 2015). Even though concealment is a criminal act punishable by the Criminal Code of Kosovo, the Civil Status Office, which issues this document, maintains limited capabilities to verify the identity of heirs and the inventory of properties declared by heirs of the deceased right holder.

Following the issuance of the Act of Death, owing to gaps in the legal framework, both courts and notaries have jurisdiction over uncontested inheritance claims. The Law on Notary (LoN) is not aligned with the Law on Uncontested Procedure (LoUP) and Law on Inheritance (LoI). To address uncontested inheritance claims requires administrative review of a party's documents against prescribed criteria, rather than adjudication of issues pertinent to substantive law (Keefe, 2016). As a result, the LoN gives mandate to notaries to conduct an administrative review of uncontested inheritance claims, but the LoUP and LoI were not subsequently amended, neither to accommodate this new mandate entrusted to notaries nor to clarify the mandate of courts in dealing with uncontested inheritance cases. The LoN grants jurisdiction over uncontested inheritance claims to notaries, but the LoUP details a procedure on uncontested inheritance claims only for courts. The LoI also states that uncontested inheritance claims are handled by courts, but does not mention notaries (Assembly, 2004, Article 127). Dual jurisdiction is confusing for the public because, on the one hand, a procedure for handling uncontested inheritance cases is detailed for courts but not for notaries; on the other, notaries are able at providing faster service but lack due process safeguards that courts offer.

The LoUP mandates the local Civil Status Office to *ex officio* initiate inheritance proceedings by submitting the Act of Death to the court within 15 days from the day they are issued (Assembly, 2008b, Article 133). In practice, the Civil Status Office is incapable in fulfilling such a mandate, remaining at the

discretion of heirs to initiate and complete uncontested inheritance procedures. For faster service, many citizens prefer notaries over courts, demonstrated by the exponential decrease of uncontested inheritance cases being handled by courts (NSPR Annex 4, 2017). Notaries, however, have been criticized for charging high service fees compared to Kosovo's average household income (World Bank, 2017). Due to cost or trust concerns, a limited number of citizens still choose to validate their uncontested claims through courts. However, although the LoUP details handling uncontested inheritance claims for courts, there are also members of the public who have encountered difficulties in realizing their rights through courts. Owing to a heavy workload, several courts have refused processing uncontested inheritance claims (NSPR Annex 4, 2017). Dual jurisdiction shared by overworked courts and costly notaries, on the one hand, and discrepancy in whether institutions or claimants initiate procedure, sets a confusing context for the surviving family to initiate timely inheritance proceedings.

Following the initiation of inheritance proceedings, notification of heirs is time consuming. The law requires physical delivery of notice to all heirs listed in the Act of Death, or to their respective heirs if they passed away. For inheritance proceedings initiated many years after the death, the accuracy of correspondence addresses and the large number of potential claimants spanning several generations of heirs, many of whom live outside of Kosovo, create further difficulties in initiating delayed inheritance proceedings. *De facto* possessors who seek to formalize their inheritance rights are further discouraged because it is their responsibility to contact and secure the participation of all potential claimants (Keefe, 2016). In delayed inheritance cases, current notification requirements of all potential heirs encourage concealment rather than create a due process safeguard. Anecdotal information suggests that to circumvent notification requirements, heirs living abroad who plan to renounce their rights also willfully would choose to be excluded from the list of heirs through concealment.

Even though concealment is a criminal offence, citizens are unlikely to be caught. The Civil Status Office does not have an efficient mechanism to generate a family tree to verify the identity of heirs and an inventory of properties declared by heirs of the deceased right holder. In addition, notaries do not have access to the civil and cadastral registry to independently verify the validity of information in the Act of Death. The testimonial nature of the Act of Death, the dual jurisdiction of court and notaries over uncontested cases, and claimant notification procedures discourage timely initiation of inheritance proceedings or the formalization of delayed inheritance claims. The legal and institutional setup to initiate inheritance proceedings does not encourage initiation of inheritance proceedings and lacks safeguards to ensure that vulnerable citizens, especially women, voluntarily and freely exercise their rights during inheritance proceedings. The legislative amendments introduced aim to both encourage formal inheritance proceedings and equal protection of property rights.

4. The Inheritance Package: The Introduction of Efficient Procedures and Due Process Safeguards to Encourage Formalization of Informal Inheritance

This section focuses on the reasoning behind efficiency measures and due process safeguards introduced through recent legislative amendments in Kosovo. On October 3rd, 2017, the Government of Kosovo (hereinafter, the Government) approved amendments to the laws on inheritance and uncontested procedure and proposed a newly drafted law on notaries. The Inheritance Package passed the first reading in the Kosovo Assembly, which was also supported by members of the opposition, and a vote on the second reading is expected soon. The legislation resolves inconsistencies between legal acts, resolves confusion over notaries' authority to process undisputed inheritance, and provides guidelines to ensure that notary fees are reasonable for Kosovo citizens. Subsequently, the amendments clarify and streamline procedures for timely initiated inheritance proceedings, introduce a notice mechanism for addressing delayed inheritance claims, and strengthen due process safeguards to protect the rights of women, children, and surviving spouses.

Unlike prior dual jurisdiction between courts and notaries to process undisputed inheritance cases, the Government-approved amended Law on Uncontested Procedure provides notaries with exclusive jurisdiction over uncontested inheritance claims, including the delayed inheritance claims. The Government made this policy decision to encourage citizens to initiate timely inheritance proceedings, as well as to come forward to formalize their informal inheritance rights. In order to prevent high costs for citizens, the draft-Law on Notary proposes the average per capita income as the basis against which notary service fees should be set (GoK, 2017b, Article 16). USAID PRP's comparative EU practice analysis found that although there is no standard practice among EU states with regard to notaries' mandatory role in uncontested cases, "[m]ost EU member states allow notaries to be involved in non-contested procedures, including matters of inheritance" (USAID PRP, 2016). Along with efficient procedures, due process safeguards have also been introduced to ensure that notaries can properly handle uncontested inheritance cases.

The amended legislation aims to address implementation challenges arising at the first step in the chain of uncontested inheritance proceedings. The amended Law on Uncontested Procedure stipulates that the Act of Death is no longer a declarative document. Instead, to prevent concealment of potential heirs, it is the responsibility of the Civil Status Office to independently verify the list of heirs. The amendment states that the Civil Status Office will "independently" generate the list of heirs from available data in the civil registry (GoK, 2017c, Article 10). This amendment does not prevent family heirs from assisting with compiling a list of heirs; however, it assigns legal responsibility to the Civil Status Office to verify the list of heirs against the office's existing civil registry. Encouraging compliance is important because, while the law provides for penalties against concealment, they are rarely enforced.

Additional verification steps to prevent the concealment of heirs have also been introduced. Both courts and notaries have experienced cases when they received acts of death that do not correspond with the composition of heirs that came forward. Discrepancies are also probable because the Law on Inheritance, following European practice, also recognizes children outside of marriage as first-rank compulsory heirs. In cases of discrepancy, notaries are obliged to request the Civil Status Office to revise the Act of Death according to civil registry records, or verify the Act of Death received (GoK, 2017c, Article 11). For swift and independent verification of the identity of potential heirs and the inventory of immovable property of the deceased right holder, notaries have also been granted direct access to the civil registry system and cadastral registry (GoK, 2017c, Article 28). Citizens are obliged to inform the notary of any potential unidentified heirs and false statements are punishable under Kosovo's Criminal Code (GoK, 2017c, Article 29). Proposed amendments prevent concealment by encouraging compliance without jeopardizing the efficiency of the process.

Following the issuance of a verified Act of Death, the newly introduced procedure for timely initiation of proceedings requires holding an information session with all heirs. Notaries are to use information sessions to notify all potential heirs of their rights and obligations (GoK, 2017c, Article 31). Given the high number of women that renounce their property rights, additional individual sessions with heirs who decide to renounce their rights have also been introduced (GoK, 2017c, Article 31). During individual sessions, if notaries suspect or possess credible information that any heir is renouncing his/her rights under pressure, notaries are obliged not to accept such renouncement and, subsequently, are requested to make a referral to state prosecution (GoK, 2017c, Article 32). An additional procedural safeguard has also been introduced for protecting the property rights of children. In cases of renouncements by a minor successor, a permission for renouncement will be requested from the government custodian body responsible for protecting the rights and interests of minors (GoK, 2017a, Article 8). Even though information sessions in uncontested cases can be seen as purely formal, the introduction of information sessions for all heirs and private interviews with heirs who intend to renounce their rights are instructive to increasing citizens' awareness about their rights and serve as an opportunity for notaries to discover coercion.

A novel and primary addition that contributes to both efficiency of proceedings and due process is the notification of heirs to participate in inheritance proceedings. All potential heirs are expected to physically participate in proceedings or submit an authorized declaration whether they would intend to keep or forfeit their rights. When inheritance proceedings are initiated many years after the death, the large number of claimants spanning several generations of heirs, many of whom live outside of Kosovo, creates further difficulties in notifying all heirs, discouraging formalization of tenure by *de facto* property possessors. Two different forms of notification procedures have been introduced for timely and delayed

inheritance proceedings. The difference between timely and delayed inheritance proceedings depends on the time elapsed from the occurrence of death until the initiation of proceedings. The Government has determined that inheritance proceedings are considered delayed when 10 years have elapsed from the occurrence of death until initiation of proceedings.

In cases of timely initiation of proceedings, in addition to physical delivery of notice to all heirs listed in the Act of Death, enhanced notification means have also been introduced, including wide publication of notice for citizens living in the diaspora through a widely publicized and accessible state information portal (GoK, 2017c, Article 30). Guaranteeing broad dissemination of notice serves as an additional opportunity to inform potential heirs, who could have been intentionally excluded, to come forward and claim their rights. Notifications on individual inheritance proceedings are also expected to be used as an awareness tool, containing comprehensive information on the rights of eligible heirs to the property of deceased right holders so that citizens can protect their rights as heirs.

In cases when 10 years have elapsed from the occurrence of death until the initiation of proceedings, the amendments apply the constructive notice doctrine, which is a form of implied notice through wide dissemination of information, providing parties with the opportunity to come forward and make a claim within a fixed time period. Constructive notice is a legal doctrine that “presumes all parties with an interest in the claim are provided with information and knowledge about the claim that can be acquired by normal means” (Keefe & Salihu, 2017). Proper implementation of constructive notice requires the robust and enhanced dissemination of notice. While dissemination of notice would target the public rather than a particular potential heir, the expectation is that any reasonable potential heir with stakes in a property of a long-deceased right holder would come forward and protect their property rights. If the eligible parties do not come forward to assert their rights during a 90-day period, they are considered to have forfeited their rights. Efficient notification procedures, coupled with widespread and robust dissemination of information, enables *bona fide* possessors to formalize their rights; whereas those who claim to have an interest in a proceeding but would otherwise be concealed, to come forward.

The portfolio of proposed measures simplifies the process of formalizing “informal inheritance” rights, and also makes it more transparent to all, especially women, who are more likely to be concealed or excluded against their will. Recent legislative changes should motivate citizens to come forward for legal recognition of their informal inheritance rights, narrowing the gap between cadastral records and *de facto* ownership.

5. Challenges and Opportunities: The Implementation of the Inheritance Package

With the adoption of the Inheritance Package by the Assembly of Kosovo, USAID PRP will support the Ministry of Justice in preparing sublegal acts and protocols on detailed guidelines to support the proper implementation of the laws. Safeguards to discourage concealment among citizens and strengthen vigilance against concealment by the Civil Status Office and notaries have been introduced throughout the process without disturbing the effectiveness of proceedings. However, continued attention to the newly introduced implicit notification procedures and notary information sessions would ensure that the efficiency aspect of such measures does not trump due process.

Constructive Notice has been introduced for heirs to come forward with delayed inheritance claims. At the same time, however, to ensure that implied notice contributes to both faster proceedings and greater access to information for heirs who would otherwise be excluded, the Government will need to guarantee the widespread and robust dissemination of information. The Inheritance Package foresees the establishment of a widely accessible, online information portal that would be widely publicized. Internet usage in Kosovo does not differ from other European countries; 76.6% of Kosovars use internet, equally used by men and women and almost equally used in urban and rural areas, thereby justifying the use of online means to disseminate information (STIKK, 2013). The establishment of a portal that would inform all citizens, in and out of Kosovo, of ongoing inheritance proceedings is a precondition for the proper implementation of this newly introduced tool. The robust dissemination of information outside Kosovo is particularly important considering Kosovo's post-conflict context; the armed conflict in 1999 gave birth to a large diaspora and to 97,000 Displaced Persons (NSPR Annex 4, 2017). Without enhanced dissemination of information about ongoing inheritance proceedings, Constructive Notice would pass only the efficiency test.

Attention should also be given to the proper implementation of the newly introduced information sessions with all heirs and private interviews with heirs who decide to renounce their rights. Although uncontested procedure entails the administrative review of documents rather than the adjudication of rights, information sessions should not be overlooked. Information sessions give notaries an opportunity to sense whether individual heirs are being pressured or heirs are in dispute and, subsequently, refer disputes to court for adjudication of rights. With notaries' exclusive jurisdiction over uncontested inheritance cases, the issuance of proper guidelines on information sessions would instruct notaries in preventing disputes from being presented as uncontested claims. Guidelines on information sessions should also be offered to specify a time period—between the general information session and the private interview with heirs who want to renounce—which would serve as a period of reflection or of cooling-off for heirs that declared that they would renounce their inheritance rights. The Ministry of Justice is mandated to grant and revoke notary

licenses. The proper administration of information sessions should be subject to MoJ's inspection in the future to validate notaries' exclusive jurisdiction over uncontested inheritance proceedings.

The shift in jurisdiction from courts to notaries does not only benefit those seeking to initiate inheritance proceedings. It also frees the overburdened court system, and allows them to focus on adjudicating actual property disputes. With the introduction of the Inheritance Package, however, the more citizens initiate uncontested inheritance proceedings, the more disputes over rights may be brought to the surface. Working to improve the court system in the long run, rather than to circumvent it, is crucial for the long-term legal recognition and resolution of informal rights to property.

While the Inheritance Package aims at making legislation more responsive to realities on the ground, it can only partially influence cultural attitudes towards property rights. Critics that are concerned about the persistence of customary law over statutory law question the likely impact of legislation introduced in reducing informal inheritance at scale and encouraging equal property rights between men and women. To influence culture through law and promote equal property rights, it was initially proposed to amend the LoI and LoUP to oblige all heirs to acquire ownership of their inheritance share *before* being able to renounce their rights. A prohibition of renouncement, however, could potentially further entrench informal inheritance. Renouncement by 45% of women, as compared with only 6% of men, is a statistic that must guide policy. At the same time, since informality is widespread among the Kosovo society, the introduction of a ban on renouncement could discourage heirs from coming forward to formalize their rights. Subsequently, in an extralegal environment, women would be prevented from utilizing available legal means to protect their rights. Obliging all heirs to inherit would also entail legal consequences, such as assuming debt or tax obligations associated with inherited property. Finally, Kosovo aspires to join the European Union and, in this context, the right to renouncement is a basic right that is consistently enshrined in all European Union countries' legislation. The Inheritance Package is well positioned to both encourage formalization through streamlined procedures and protect the property rights of women through procedural safeguards. Women's property rights cannot be enforced without addressing large-scale informality, and the Inheritance Package aims at addressing both.

The Inheritance Package introduces a streamlined procedure and due process safeguards for forced heirship, but it cannot prevent the exclusion of women in cases of *inter vivos* transactions. Such transactions are deemed legal only if all heirs consent; however, in Kosovo's cultural context, it is highly unlikely for women to legally come forward and contest. The Government should consider developing a procedure that would entrust notaries with *inter vivos* transactions, administering an inclusive process throughout which heirs would also seek information about their inheritance rights.

While the Inheritance Package aims at mitigating cultural attitudes that contribute to informality, USAID PRP has also developed national awareness campaigns to engage with citizens about the benefits

that come with using legal means for securing rights to property. Promoting the use of wills, which is also uncommon in Kosovo, would both expedite the inheritance process and prevent potential disputes among family members. The introduction of a diverse portfolio of measures in favor of formalization must also contribute to gradual changes in attitudes towards engagement with legal procedure and gender-sensitive distribution of immovable property.

6. Conclusion

The discrepancy between cadastral records and *de facto* possession of property in Kosovo was exacerbated by delayed inheritance proceedings as a major source of informality. The resulting gap between Kosovo's cadastral records and informal ownership of immovable property contributes to tenure insecurity. In Kosovo's patrilineal social context, informal relations to property place women in an even more vulnerable position than they are in already. Dominant land governance frameworks installed in Kosovo over time provide an explanatory context for the emergence of informal inheritance transactions and the domination of customary law over civil law. Addressing informal inheritance is a challenge of implementing procedural rather than substantive law. Current procedure to initiate inheritance procedures on time or to formalize ownership in the case of informal inheritance is cumbersome for citizens. The introduction of the Inheritance Package contributes to both efficiency and due process of inheritance proceedings; this is an incentive for citizens to come forward and formalize their inheritance.

The Inheritance Package disentangles crucial knots in the chain of inheritance proceedings, expediting and encouraging recognition of inheritance rights. However, the completion of inheritance proceedings does not entail the automatic registration of authenticated rights in the cadastre. Notaries cannot perform a mandatory registration in the cadastral registry on behalf of heirs. Citizens are responsible for submitting the notary act to the cadastral registry office in order to update the registry. Currently, local registry offices charge costly service fees and implement inconsistent registration requirements across municipalities, discouraging citizens to register their rights. While the Inheritance Package incentivizes the formalization of inheritance rights, additional legislative changes on registration practices are necessary to narrow down the discrepancy between cadastral records and *de facto* possession of immovable property. The National Strategy on Property Rights, approved by the Government and currently under implementation, encompasses multiple measures for streamlining the cadastral registration process and for instituting affordable registration fees, to ensure that ultimately the rights are registered in the cadastre.

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