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# PROPERTY RIGHTS PROGRAM (PRP)

Informality in the Land Sector: The Issue of Delayed  
Inheritance in Kosovo

**APRIL 2016**

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# PROPERTY RIGHTS PROGRAM (PRP)

## INFORMALITY IN THE LAND SECTOR: THE ISSUE OF DELAYED INHERITANCE IN KOSOVO

APRIL 2016

### **DISCLAIMER**

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# ACRONYMS AND ABBREVIATIONS

AI	Administrative Instruction
AoD	Act of Death
BCC	Behavior Change Communication
CCPR	EU-funded Civil Code and Property Rights Project
CRA	Civil Registration Agency
CSO	Civil Status Office
DCM	Differentiated Case Management
EU	European Union
GoK	Government of Kosovo
IT	Information Technology
KCA	Kosovo Cadastral Agency
KJC	Kosovo Judicial Council
KPA	Kosovo Property Agency
LCP	Law on Contested Procedure
LUCP	Law on Uncontested Procedure
MCO	Municipal Cadastral Office
MIA	Ministry of Internal Affairs
Moj	Ministry of Justice
OSCE	Organization for Security and Cooperation in Europe
OSR	Own-Source Revenue
PIN	Personal Identification Number
PRP	Property Rights Program
SMS	Short Message Service
USAID	United States Agency for International Development

# EXECUTIVE SUMMARY

Data from the Kosovo Cadastral Agency (KCA) indicate that approximately 30% of all property rights in Kosovo are registered in the name of deceased rights holders. Even this figure could be a low estimate. Unofficial data from the Register of Unpermitted Construction indicate that up to 50% or more applicants seeking to formalize rights in unpermitted buildings cannot demonstrate rights in the land upon which the buildings are constructed because the underlying parcels are registered in the name of deceased rights holders. Rights remain registered in the name of deceased persons because inheritance proceedings have not been initiated to formally transfer property rights from the deceased to his or her heirs.

A National Baseline Survey on Property Rights conducted in 2015 found that 50% of the respondents consider that rights in property are rights possessed by their family without having gone through inheritance proceedings; while 58% believe that property rights are based on court decisions and 49% cited duly executed contracts as constituting property rights. It is not surprising that 57% of respondents in the same survey reported that their birth family had never initiated an inheritance proceeding.

If government initiatives encouraging citizens to register their rights in property and to regularize unpermitted constructions successfully change Kosovars' attitudes and behaviors about formalizing rights in property, there will likely be an increase in the number of inheritance proceedings initiated. The current legal framework governing uncontested inheritance claims contemplates that inheritance proceedings are initiated shortly after the death of the decedent (immediate inheritance proceedings). In practice, however, Kosovars have not initiated inheritance proceedings in a timely manner. As a result, a significant percentage of proceedings moving forward will be initiated long after the death occurred (delayed inheritance proceedings).

These two types of proceedings are distinguished by the length of time that has elapsed from the occurrence of death until the initiation of proceedings. During the intervening years between death of the rights holder and the initiation of (delayed) inheritance proceedings, it is not uncommon for the number of descendants of the rights holder (potential heirs) to have grown to thirty or more. It is also not uncommon for some of the potential heirs to have taken possession of the deceased's land parcel, constructed their homes on it and exercised de facto rights over the property.

Uncontested inheritance proceedings comprise a two-step process: review by a court or notary of the potential heirs' documents and issuance of a decision or act verifying their rights to inherit; and the registration of the verified rights in the Municipal Cadastral Office (MCO). For the government's formalization initiatives to have impact, uncontested inheritance proceedings and property rights registration processes must be improved to make them more streamlined, efficient, predictable and affordable, to ensure that citizens already predisposed not to formalize their property rights do not encounter further disincentives to doing so.

The purpose of this report is to critically assess provisions in the legal framework governing uncontested inheritance claims and the registration of property rights to identify potential options for making these improvements. The report also assesses the practices of both courts and notaries to identify and propose potential approaches for strengthening due process safeguards to ensure that all potential heirs, and especially women, can fully exercise their rights to inherit property. Findings from these assessments are then applied to the four most common scenarios or "fact patterns" emerging from delayed inheritance claims to inform recommendations for developing new procedures responsive to the circumstances unique to these claims to help increase efficiency, reduce disincentives to formalization and strengthen due process safeguards.

# KEY FINDINGS AND RECOMMENDATIONS

## REVIEW OF THE HEREDITARY ESTATE

Uncontested inheritance claims contain no issues of substantive law or fact to be adjudicated. They require only an administrative review of the documents presented by the parties. Although the legal framework currently provides both courts and notaries with jurisdiction over uncontested inheritance claims, it would seem that the notary system was established to perform the exact type of administrative review required by the Law on Uncontested Procedure (LUCP) to process these claims and can do so more quickly and efficiently than the courts.

Arguments in favor of courts retaining jurisdiction of these claims often cite the role of courts to implement safeguards to protect the rights of potential heirs to inherit property. There are two separate and distinct threats to the rights of potential heirs that must be safeguarded against: the coercion of heirs, especially female heirs, to renounce their rights to inherit; and the concealment and exclusion of potential heirs from the inheritance proceedings.

To safeguard against coercion, the USAID/Kosovo Property Rights Program (PRP) and the European Union-funded Support to the Civil Code and Property Rights (CCPR) project are assisting the Ministry of Justice (MoJ) in drafting a Concept Document that will propose measures to prevent potential heirs from being forced to renounce their rights to inherit. One proposal under consideration is to require a separate court hearing for heirs who indicate their intention to renounce.

Courts and notaries are similarly constrained to combat concealment because data management limitations in the Civil Status System prevent them from independently verifying the identity of potential heirs. Safeguards may be strengthened by developing enhanced notification procedures to ensure that all potential heirs have information and knowledge of the proceedings. Behavior Change Communication (BCC) messages could also be disseminated to change cultural attitudes and behaviors about the rights of women to inherit and to inform citizens that concealment is a criminal offense. These messages should be reinforced with the well-publicized prosecution of acts of concealment.

Regardless of which institution is provided exclusive jurisdiction over uncontested inheritance claims, the key for achieving efficiency is to ensure they do not become contested, since contested cases encounter long delays in the courts. Mediation appears to be an effective tool for assisting potential heirs to resolve disputes that may arise during the proceedings without going to court.

### *Recommendations*

1. The MoJ should decide, as a matter of priority, which institution (either courts or notaries) have exclusive jurisdiction over uncontested inheritance claims and amend the legal framework to reflect this decision and eliminate the confusion that exists today.
2. In the event the MoJ determines the courts should have exclusive jurisdiction, courts should adopt notification practices used by notaries to communicate with potential heirs. These practices are demonstrably more efficient and reduce the time required to process claims.
3. The greatest opportunity for creating efficiency is to ensure that potential heirs have information and tools to resolve disputes that may arise during the uncontested inheritance process. Otherwise, the claim will become contested and subject to the long delays encountered by contested claims in the courts. This will also serve to reduce the burdens on an already overburdened court system. Citizens should be provided clear and easy-to-understand information about their rights and obligations in inheritance proceedings, to mitigate the risk of disputes occurring.



4. As mediation appears to an effective tool to resolve disputes, citizens should be provided with information about mediation services and these services should be expanded and made more accessible to citizens.
5. The Ministry of Internal Affairs (MIA) and the Civil Registration Agency (CRA) should assess the technical capacity of the civil registration system's IT and data management systems to generate a verified list of the deceased's family members; and if the system lacks the technical capacity to generate such data, should identify the actions that must be taken to produce the required technical capacity.
6. Safeguards against concealment of heirs may be strengthened by enhanced notification procedures to ensure all potential heirs are informed about the claim to make the proceedings more transparent. These procedures would be strengthened with BCC messages to encourage female potential heirs to assert their rights and to inform citizens that concealment is a criminal offense. These messages should be reinforced with the well-publicized prosecution of acts of concealment.

## **TRANSFER OF RIGHTS IN IMMOVABLE PROPERTY FROM DECEASED PERSONS TO THEIR HEIRS**

Interviews conducted by PRP with staff in MCOs indicates inconsistent practices across MCOs regarding the requirements for completing cadastral surveys. It appears some MCO's require surveys to be completed whenever citizens request updates to cadastral data to formalize their rights, while other MCOs require a survey only when property rights are transacted. Similarly, some municipalities require citizens to pay any back taxes owed on the property before they will be issued a cadastral certificate, which is required to initiate inheritance proceedings. The cost of cadastral surveys and payment of back taxes owed may exceed the economic means of the average Kosovar and may prevent them from formalizing their rights in property.

Additionally, imprecise cadastral instructions may create inconsistent practices to correct technical inconsistencies between the property description contained in inheritance decisions and the existing cadastral data. Such inconsistencies would not appear uncommon in delayed inheritance claims because cadastral data will not have been updated to reflect changes to the property that have occurred during the intervening years between death of the rights holder and initiation of the inheritance proceedings. Such inconsistencies could delay registration of inheritance decisions, create confusion and frustration and led to unpredictable outcomes, which would create additional disincentives to formalization.

### *Recommendations:*

1. Citizens will not be motivated to formalize their rights in immovable property (and initiate inheritance proceedings as a necessary step to formalize) unless they understand the benefits of formalization and are provided incentives to do so. Government formalization initiatives such as systematic registration of property rights and regularization of unpermitted constructions should be accompanied by intensive public information and awareness campaigns that include BCC messages to change the Kosovo public's attitudes about formalizing property rights.
2. The Kosovo Cadastral Agency should conduct a full business analysis of its procedures to ensure that registration requirements do not create barriers or disincentives to formalizing property rights. The analysis should be designed and implemented to identify opportunities to make the process more affordable, efficient, transparent and predictable. It should conclude with the development of:
  - standard forms, templates and instructions for registering and transacting rights;
  - clear procedures and guidelines to ensure consistent registration practices in all MCOs;

- training program for MCO staff to improve service delivery;
- a simple, plain-language “how-to guide” to make the entire registration process more understandable for citizens and to provide them the knowledge and information they require to register and formalize their rights;
- policies to distinguish between the recognition/formalization of rights and the transaction of rights, with correspondingly different procedures, costs and fees;
- options to subsidize or waive the fees and costs charged to citizens who are seeking only the recognition and formalization of their rights, as is currently done in cadastral zones selected for reconstruction;
- policies and guidelines for determining the circumstances under which cadastral surveys (typically the highest cost in the registration process) are required and the circumstances under which “general boundaries” are sufficient to demonstrate rights; and
- policies developed in consultation with the Ministry of Finance to provide tax incentives to encourage the formalization of rights -- for example a one-time amnesty for the payment of back property taxes, possibly linked with some form of inheritance tax relief.

## **FINDINGS AND RECOMMENDATIONS SPECIFIC TO DELAYED INHERITANCE CLAIMS**

Under current inheritance practices it is the responsibility of potential heirs to notify and secure the participation of all potential heirs in the proceedings. In delayed proceedings it is typically potential heirs who have taken *de facto* possession of the deceased rights holder’s property that lead the process on behalf of all potential heirs in order to formalize their rights in the property. Because delayed proceedings are typified by large numbers of potential heirs, many of whom may live abroad, the responsibility to secure their participation in the proceedings can be time-consuming, cumbersome and frustrating. Under immediate proceedings, the court will assign a statutory share in the deceased’s land parcel to any potential heir who does not participate in the proceedings to declare his or her intent accept a share. This option does not appear feasible in delayed claims with large numbers of potential heirs because it could lead to excessive fragmentation of the land parcel and render it unproductive. It also appears the proceedings would not be concluded until all potential heirs come forward to declare their intent. If, despite best efforts to locate and secure the participation of all potential heirs in the proceedings, some cannot be located or simply refuse to participate, it will not be possible to formalize rights and the legal status of the land parcel could remain undetermined indefinitely.

Additionally, it is the potential heirs in possession of the land and leading the process who have the most to gain from the concealment of other heirs. Courts and notaries, which are unable to verify the identity of potential heirs from data generated by the Civil Registry System in immediate proceedings will be even more challenged to do so in delayed proceedings.

The legal doctrine of “constructive notice” could be applied to delayed proceedings to address these issues. Under this doctrine, potential heirs and parties with an interest in the claim are presumed to have been provided with sufficient information and knowledge about the claim to enable them to exercise their rights to inherit. The application of this doctrine must be accompanied by requirements to ensure that the means and manner by which notice is provided are reasonably calculated to be effective. Constructive notice would also be coupled with a statutory deadline within which potential heirs must either assert or renounce their rights to inherit. Once the statutory deadline has passed, potential heirs are then precluded from asserting their rights and the claim is finally concluded.

Provided that the constructive notice procedures are modeled on those that are successfully implemented in other European countries and meet European Union human rights standards for due

process, applying constructive notice would support the efficient processing of claims as well as safeguards to ensure that the rights of all potential heirs, especially women and members of non-majority communities, are protected.

Constructive notice places the responsibility on each potential heir to be diligent in asserting his or her rights in the property. This removes the burden of responsibility from a few of the potential heirs to lead the process on behalf of all the others, thereby making the process simpler, easier and more efficient. Constructive notice also protects the interests of potential heirs acting in good faith to formalize their rights by compelling all potential heirs to either participate in the proceedings to assert their rights within the statutory deadline or forfeit the right to do so.

Constructive notice procedures would accommodate the concept of a special court hearing, which the Ministry of Justice is considering as a safeguard against coerced renunciation. These procedures can also support safeguards against the concealment of heirs. By placing equal responsibility on all potential heirs to assert their rights, constructive notice helps reduce the influence and power of the potential heirs in possession of the land parcel who now typically lead the proceedings. This helps create “space” between them and the other potential heirs, which can help reduce pressure exerted on some heirs to remain concealed and encourages them to participate in the proceedings. Robust public information and outreach activities that support constructive notice, combined with BCC messages will also promote greater transparency and opportunities for all potential heirs to participate in the proceedings.

Constructive notice could also be applied to formalization of claims requiring the participation of members of non-majority communities displaced by the conflict. This would include claims filed with the Kosovo Property Agency (KPA). Constructive notice provides both effective due process safeguards to protect the rights of displaced persons while promoting efficiency and finality in the claims process.

*Recommendations:*

1. Policies on constructive notice should be consistent with EU guidelines on due process. The procedures should prescribe the frequency, duration and venue of notice (official websites, embassies, institutions, social and other forms of media). Procedures might, for example, provide for two stages of notice: the first when the inheritance claim has been filed, and the second after judgment has been issued. The procedures should prescribe deadlines within which potential heirs and other parties to the claim can assert their rights and/or appeal the final judgment.
2. In addition to ensuring that the constructive notice procedures meet EU human rights standards for due process, the procedures should also be negotiated between Pristina and Belgrade under the auspices of the EU to ensure effective notice is delivered to persons displaced by the conflict to safeguard their rights and enable more efficient processing of property restitution claims lodged with the KPA.
3. If the MoJ requires separate court hearings be held to ensure that potential heirs who renounce have not been coerced, courts should adapt the notification practices followed by notaries to ensure hearings can be scheduled and conducted quickly. Given the large number of potential heirs who may decide to renounce, policies might be developed to limit the ranks of heirs eligible to take a share. Lastly, procedures should be developed that would allow potential heirs living abroad to renounce their rights in their country of residence. A litany could be developed that would be read by the competent official to the potential heir prior to the potential heir making a sworn statement to renounce.

# PROBLEM STATEMENT AND PURPOSE OF THIS REPORT

Data generated from the KCA systematic registration and cadastral reconstruction activities indicates that approximately 30% of all applicants attempting to formalize and register rights in immovable property are prevented from doing so because rights in the land they possess are currently registered in the name of ancestors who are long-deceased.<sup>1</sup> In addition, anecdotal information indicates that up to 50% or more of applicants seeking to formalize unpermitted buildings through the government of Kosovo's (GoK's) legalization program cannot demonstrate rights in the land upon which the buildings are constructed because the land is currently registered in the name of rights holders who are long deceased.<sup>2</sup>

Property rights remain registered in the name of deceased persons because family members of the deceased (the "potential heirs")<sup>3</sup> have not initiated uncontested inheritance proceedings to formally transfer rights from the deceased to themselves. This is likely because, for cultural, historical and practical reasons, Kosovars have not perceived the value of formalizing their rights to land and immovable property.

Kosovar's attitudes and behaviors towards formalizing property rights were measured in a National Baseline Survey on Property Rights contracted by the PRP in 2015. Respondents most frequently defined rights in property as:

- "to own and use property as a result of court decision which recognized the property rights" (58%);
- "to own and use property which belongs to family even though the inheritance process was not initiated" (50%); and,
- "to own and use property which you or your ancestors have bought based on legalized or notarized contract (formal contract)" (49%).<sup>4</sup>

The survey results indicate that Kosovars perceive that rights based on possession of family property as having similar legal effect as rights based on a court decision or formalized sales contract. It is not surprising that 57% of respondents in the same survey reported that their birth family had never gone through an uncontested inheritance proceeding.

It should also be noted that Kosovar tradition recognized verbal contracts secured through a promise based on honor and executed in the presence of witnesses as an accepted way to transact rights in property. This tradition became further entrenched in the early 1990's when discriminatory legislation was passed by the former regime that banned inter-ethnic sales of immovable property,<sup>5</sup> thereby preventing the formal recognition of rights transacted between Kosovo Albanians and Serbs.

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<sup>1</sup> Email from World Bank Team Leader for the Real Estate Cadastre and Registration project in Kosovo to the PRP, November 05, 2015.

<sup>2</sup> The GoK program underway for legalizing unpermitted constructions may provide additional data on this question. To date officials have not yet gathered such information.

<sup>3</sup> This report uses the term "potential heirs" to refer to descendants of the rights holders whose rights to inherit have not been formally recognized by a court or notary.

<sup>4</sup> USAID 2015 report, Property Rights Program: National Baseline Survey for Property Rights in Kosovo.

<sup>5</sup> USAID 2004 report, Land and Property Rights Assessment.

Verbal contracts not registered in the cadastre contribute to much of the informality currently existing in Kosovo's property sector.

Assuming government initiatives to systematically register rights in property and regularize unpermitted constructions succeed in changing Kosovars' attitudes and behaviors towards formalizing their property rights, there will likely be an increase in the number of inheritance proceedings initiated. The proceedings are required to transfer rights from deceased rights holders to the current possessors of land and immovable property in order for the possessors to then benefit from these formalization initiatives. The Law on Uncontested Procedures (LUCP)<sup>6</sup> governs uncontested inheritance claims and contemplates that inheritance proceedings will be initiated in a timely fashion soon after a death has occurred. Timely initiation of proceedings is referred to in this report as an "immediate inheritance" claim or proceeding.

Because Kosovars have not been diligent in initiating inheritance proceedings in the past, a significant percentage of inheritance proceedings moving forward will be initiated many years after death of the registered rights holder, not uncommonly twenty years or more. Inheritance proceedings initiated many years after the rights holder's death are referred to as "delayed inheritance" claims or proceedings.

Delayed inheritance claims are characterized by circumstances created by the passage of time. The size of the deceased rights holder's family typically grew during the years after the death occurred, leaving a large number of family members who, as potential heirs to the estate, have a statutory right to the immovable property assets in the estate. It does not appear uncommon for delayed inheritance claims to include up to 30 or more potential heirs. Additionally, it does not appear uncommon for some of these potential heirs to have taken *de facto* possession of land parcels registered in the name of the deceased, informally sub-divided it and constructed their homes and made other investments on the parcel.

Provisions in the LUCP envisioning an immediate inheritance claim do not address the large numbers of potential heirs and any *de facto* property rights that may be exercised by potential heirs in the land parcel of the deceased. Anecdotal information indicates that citizens initiating delayed inheritance claims find the process to be overwhelming, confusing, time-consuming and expensive. Such experiences create disincentives to initiating such claims and discourage formalization. They also perpetuate a vicious cycle because the longer citizens wait to initiate delayed inheritance claims, the more complicated and difficult they will become to resolve.

For the government's formalization initiatives to have impact, new procedures must be developed to make delayed inheritance proceedings more streamlined, efficient, predictable and affordable for citizens. Otherwise citizens that appear already predisposed not to formalize their rights to property will encounter further disincentives to initiate delayed inheritance proceedings frequently required to register rights in property and regularize unpermitted buildings they have constructed.

The purpose of this report is to critically assess provisions in the legal framework governing uncontested inheritance claims and the registration of property rights to identify options for improving these process and support development of incentives for citizens to formalize their property rights. This report also assesses the practices of both courts and notaries to identify options for strengthening due process safeguards to ensure all potential heirs, especially women, can fully exercise their rights to inherit property. Findings from these assessments are then applied to the four most common scenarios or "fact patterns" emerging from delayed inheritance claims to inform recommendations for developing new procedures responsive to the circumstances unique to these claims that would help increase efficiency, reduce disincentives to formalization and strengthen due process safeguards.

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<sup>6</sup> Law No. 03/L-007 "Law on Out Contentious Procedure." N.B.: The English translation of the law uses the term "out contentious." This would appear to be an incorrect translation. The term "uncontested" is used in this assessment report. Accordingly, the acronym "LUCP" is used in reference to this law.

To help frame these issues for discussion, the first section of the analysis below provides an overview or “mapping” of the legal provisions and procedures that governs the processing of immediate inheritance claims. The second section presents a critical analysis of uncontested inheritance procedures through a discussion of the comparative roles of courts and notaries and provides general recommendations to improve efficiency and strengthen safeguards. The final section provides a targeted application of this analysis to four specific delayed inheritance scenarios or “fact patterns” that have emerged from the failure of potential heirs to timely initiate inheritance proceedings and fact-specific recommendations related to each.

## METHODOLOGY

The analysis presented in this report was developed through a three-step methodology. First, a thorough desk review was conducted of the relevant substantive and procedural legislation governing inheritance proceedings, as well as civil society court monitoring reports of contested inheritance cases and other relevant secondary literature.

This was followed by in-depth interviews with key informants including judges, notaries, lawyers and officials in Municipal Civil Status Offices (CSOs) and Municipal Cadastral Offices (MCOs), to better understand the administrative and practical constraints impeding the efficient processing of uncontested inheritance claims. Judges interviewed also provided selected court case files for review. Please see Annex I for a complete list of interviewees.

PRP used the information gathered to produce a critical analysis of the current legal framework to identify options to make uncontested inheritance claims (both immediate and delayed) more streamlined, efficient and affordable to citizens and applied these to the four most common scenarios or “fact patterns” emerging from delayed inheritance claims, to develop specific recommendations for more efficiently resolving delayed inheritance claims and strengthening due process safeguards to protect the rights of potential heirs, especially women and members of non-majority communities to exercise their rights to inherit immovable property.

# I.0 IMMEDIATE INHERITANCE CLAIMS

## I.1 MAPPING OF THE UNCONTESTED LEGAL AND ADMINISTRATIVE PROCEDURES

Uncontested inheritance proceedings comprise a two-step process. Under the first, the potential heirs provide documents to the court or notary to demonstrate their rights as heirs of the deceased immovable property rights holder. Once these rights are verified by the court or notary, the heirs are issued a judgment or act that legally conveys to the heirs rights in the deceased's immovable property and provides the legal basis required to register these rights.

Before this process is mapped and analyzed below, we first discuss the preliminary issues of the jurisdiction of courts and notaries over uncontested inheritance claims; and the evidentiary data potential heirs are required to submit in support of their claims. This will help provide the reader with context and a better understanding of how uncontested inheritance claims are processed in practice.

## I.2 JURISDICTION

Inheritance in Kosovo is defined as “a transfer of a person’s property based on the law or based on a will (inheritance) from a dead person (decedent) to one person or several persons (heirs or legatees).”<sup>7</sup> The Law on Inheritance provides that heirs acquire the right to inherit upon the moment of death (Art. 4.1) or upon declaration of death (Art. 124.2).

Inheritance claims are treated as uncontested when the deceased died without a will (intestate) and his or her descendants (the potential heirs) are in agreement about all elements of the inheritance claim and there are no objections or disputed issues raised by any other parties with an interest in the claim.

Currently, both courts and notaries exercise jurisdiction over uncontested inheritance claims. This is not by design, rather it is the result of gaps in the legal framework.

The LUCP, enacted in 2008, provides courts exclusive jurisdiction over uncontested inheritance claims. The Law on Notary, enacted approximately one month later also provides notaries with jurisdiction over such claims.<sup>8</sup>

In an attempt to resolve this inconsistency, the Law on Notary includes a provision requiring the LUCP to be amended within one year of the Law’s passing (Art. 76.10) to harmonize the provisions of both laws and, presumably, clarify which institution has jurisdiction over uncontested inheritance claims. The required amendments have not been enacted, thereby creating confusion.

This confusion appears to have renewed the debate over which institution should exercise exclusive jurisdiction. To help frame issues to inform the debate, this report provides in the section of the legal analysis below, the “review of the hereditary estate,” a comparative analysis of court and notary capacity to efficiently process uncontested inheritance claims and implement safeguards to protect the rights of all potential heirs.

The references to “courts” in the discussion that follows reflects the language currently contained in the LUCP. In practice, however, these references also pertain to notaries who currently also have jurisdiction over uncontested inheritance claims.

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<sup>7</sup> Law No. 2004/26, “Law on Inheritance in Kosovo”, Article 1.2.

<sup>8</sup> Law No. 03/L-10, “Law on Notary”, Article 29.1.4.

### 1.3 EVIDENTIARY DATA: ACT OF DEATH DOCUMENT

The act of death document serves two functions. It provides notice to the court that a death has occurred in order for it to initiate inheritance proceedings. It also serves to present information required by potential heirs as evidence to demonstrate their legal right to inherit from the deceased property rights holder. Although practitioners often describe the act of death document as being issued *ex officio* by CSOs, in both legislation and practice it is a declaratory document that contains unverified data provided by the potential heirs themselves.

According to the LUCP, the inheritance process begins “soon as the court is notified that a person has died or is announced dead by a court judgment” (Art. 127). The announcement of death is regulated by Articles 59–72 of the LUCP. Notice is provided to the court through the “act of death” that the “communal body of the competent service for the maintenance of the death recording book” is required to prepare and deliver within 15 days from the day the death was recorded (Art. 133, LUCP). It is presumed that the communal body referred to in this provision is the CSO.<sup>9</sup>

It appears that in practice CSOs do not notify courts or notaries when a death is registered. It should be noted that the Law on Civil Status, enacted after the LUCP, contains no provisions requiring the CSO to notify the court upon registration of a death.<sup>10</sup> The Administrative Instruction (AI) providing the implementation procedures for registration of births, marriages and deaths is similarly silent on the requirement to notify courts or notaries of a death.<sup>11</sup> In the absence of notice from the CSO, it is left to the potential heirs themselves to initiate the proceedings. Additionally, there are no standard forms available to potential heirs to initiate the proceedings. Typically they submit only the act of death document.

The LUCP and more recent Civil Status legislation use different terminology regarding the act of death document. This appears to have created some confusion in practice.

The LUCP lists the data to be included in the act of death in Article 136.1:

- a) the name and surname of the dead person and the name of his parents, the profession, the date of birth and the citizenship of the dead person, whereas for the married dead person also the former surname possessed before the marriage;
- b) the day, month and year and if possible the time of death;
- c) the residence of the testator;
- d) name and surname, the date of birth, profession, the residence of the testator's spouse and the children born through marriage, outside the marriage and the adopted children;
- e) name and surname, date of birth, the residence of the other relatives which can be summoned by law in inheritance, and also of the other persons which have rights in the inheritance based on the testament; and
- f) the average worth of the real estate and especially the average worth of the testator's movable estate.

Sub-paragraphs d) through f) are most significant for verifying heirs and the contents of the estate.

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<sup>9</sup> N.B.: Although common practice is to refer to the office that issues documents related to death and birth as the “Civil Registry Office”, the applicable legislation governing the issuance of these documents refers to the “Civil Status Office.” This report references the Civil Status Office to be consistent with the applicable legislation.

<sup>10</sup> Law No. 04/L-003, “Law on Civil Status”, Chapter VII, Death Act Registration, Articles 46-53.

<sup>11</sup> Administrative Instruction (MIA) No. 06/2015, On the General Registration Procedures of the Fact of Birth, Marriage and Death”, Chapter V, Death Registration, Articles 19-24.



The Law on Civil Status, however, describes the act of death differently. It limits the contents of the act of death document to facts about the death (i.e. time, location, cause, etc.) that are to then be included in the Death Certificate that legally certifies the death. (Art. 46). The facts listed on the act of death do not include information about the deceased heirs or the contents of his or her estate (Art. 46.3).

Additionally, the AI implementing the Law on Civil Status introduces a term not included in the civil status law, “testimony of death.” It provides that the “testimony of death” document is to include information about the deceased’s heirs and the contents of his or her estate.<sup>12</sup> In essence, the “testimony of death” document contains the same information and serves the same purpose as the act of death document described in the LUCP. It is not clear why the legislators changed the terminology. It does not impact the evidentiary requirements the citizens must meet to demonstrate their claims or how courts and notaries are to process the claims.

For the purposes of this report, the document described as the “testimony of death” is understood to contain the same information as the act of death document described in the LUCP. To be consistent with the terminology used in the more recent Civil Status legislation, however, this report will use the term “testimony of death.” Citations to LUCP that reference the act of death are applicable to the testimony of death.

The LUCP provides that information contained in the testimony of death is “compiled according to the data that were obtained from the dead person’s relatives, from the persons with which the dead person used to cohabit, and also from other persons that could give data that will be noted in the act of death” (Art. 134). It should be noted that the LUCP foresees that the data in the testimony of death would be compiled by the CSO. If the CSO is unable to compile the data about heirs, it is to send partial data to the court for it to obtain the data (Art. 133.2). Article 134 makes clear that it is the potential heirs that provide the data to be recorded in the testimony of death.

The more recent civil status legislation confirms that the required data is to be provided by the potential heirs. Although the testimony of death bears the signature and stamp of the civil status officer, the information it contains is not generated by the CSO. Instead, AI 25/2013 provides that “all civil status documents are issued from the civil status system except for the...death testimony” (Art. 8.4).

This provision appears to confirm that the information relied upon by courts and notaries to process uncontested inheritance claims is neither issued nor verified by the CSO. Instead, it is unverified data produced by the potential heirs themselves.

#### **1.4 STEP I: REVIEW OF THE HEREDITARY ESTATE**

Once the claim has been initiated, courts and notaries apply the provisions of the LUCP to conduct the review of the hereditary estate. The purpose of the review is to verify the:

- Identity of the heirs;
- Assets and value of the estate;
- Data about immovable property assets in the estate required for its registration in the MCO;
- Proportionate share of each heir to the estate.

The information verified is then included in the inheritance judgment (Article 171).

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<sup>12</sup> Administrative Instruction (MIA) No. 25/2013, “On Civil Status Documents”, Article 5, paragraphs 11.10–11.14.

#### I.4.1 HEARING SESSION

The LUCP requires the review of the hereditary estate to be conducted through a court hearing session (Article 159.1). The hearing also serves as the venue through which potential heirs declare their intention to accept their share of the hereditary estate or not (Article 159.3). Notaries perform the same function by meeting with the potential heirs in her or his office.

In order to conduct the hearing, the court is required to summon the interested parties (Art. 159.2). The LUCP does not, however, provide notification procedures. In the absence of clear notification procedures, judges interviewed for this report informed they rely on the notification provisions contained in the Law on Contested Procedure.<sup>13</sup> Notaries are not bound by the formal notification procedures prescribed in the LCP. Instead, they have the flexibility to directly communicate with the potential heirs who are their clients.

#### I.4.2 DATA TO BE REVIEWED

The LUCP envisions that the majority of data to be reviewed by the court or notary is to be presented in what is now referred to as the testimony of death document. This data is to be obtained prior to the hearing session or meeting with the notary.<sup>14</sup>

The LUCP does not describe evidentiary documents other than the testimony of death. In practice, courts and notaries require potential heirs to submit:

- Death certificate for the deceased;
- Identification documents of each potential heir;
- Extracts of the birth certificate of each potential heir;
- Death certificates for all deceased potential heirs;
- Certificate of ownership issued by the MCO for immovable property owned by the deceased. The certificate must not have been issued more than one month prior to submission; and
- Any potential heirs living abroad may submit notarized statements in lieu of attending the hearing

This information is then verified to confirm the identity of the heirs, assets and value of the estate and the proportionate shares of each of the heirs to the estate.

#### I.4.3 IDENTITY OF HEIRS

The LUCP provides that if the court has no information about the identity of heirs, it may issue a public announcement in the “Official newspaper of Kosovo,” the court’s announcement board and, if necessary, published in another appropriate manner for a period of six months (Arts. 161.1 and 161.2). After expiration of the six months, the court will proceed based on the declaration of the temporary representative and available data (Art. 161.4). The court may also summon other persons it believes have a right to inherit (Art. 163.2).

#### I.4.4 ASSETS AND VALUATION OF THE ESTATE

The LUCP provides that the “inventory and estimation (valuation) of the estate are done by the competent commune service” (Art. 141.1) or the “court official appointed by the judge” (Art. 141.2). The inventory of the estate includes both movable and immovable property (Art. 139.1). This

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<sup>13</sup> Law No. 03/L-006, “On Contested Procedure.”

<sup>14</sup> LUCP, “The preliminary acts of procedure,” Paragraph b, sub-section 1, Articles 133–147.

information is provided in the testimony of death but as noted above, the information is not generated by the CSO, rather by the potential heirs themselves.

#### **I.4.5 THE HEIRS' PROPORTIONATE SHARES IN THE ESTATE**

The LUCP provides no procedures or guidance to determine each heir's proportionate share of the estate. The Law on Inheritance prescribes the ranks of inheritance in Articles 12 through 20 in descending order from the deceased's children and spouse, to the deceased parents and siblings and then grandparents. The law provides for equal shares between persons of the same rank. It appears that courts and notaries will apply the statute's provisions unless the heirs come to another agreement about their respective shares.

It also appears the LUCP favors such agreements. The law provides that the heirs and legatees may propose an agreement to the court to be incorporated into the judgment act (Art. 172). There is no language about the court reviewing or approving the agreement. It appears it is to be included in the judgment as long as none of the potential heirs object. The same would be true for claims processed by notaries.

#### **I.4.6 JUDGMENT**

The hearing concludes with a court judgment or notary decision verifying the evidence submitted by the heirs in support of their claims. The final judgment can be challenged by a party to the claim through a contested procedure (Art. 185.1 of the LUCP). The Law on Notary does not describe procedures to appeal the act issued by a notary.

If at any time in the proceedings the parties disagree about material facts related to the claim, the court is to suspend the proceedings and advise the parties to file a contested claim (Art. 166.1, LUCP). Notaries follow the same procedure.

### **I.5 STEP 2: TRANSFER OF RIGHTS IN IMMOVABLE PROPERTY FROM THE DECEASED TO HEIRS**

The inheritance judgment or notary act provides the legal basis required by the MCO to update the immovable property rights registry to reflect the transfer of rights from the deceased to his or her heirs and then register these rights in the name of the heirs.<sup>15</sup> The heirs are required to submit to the MCO the judgment or act together with an application for the registration of their rights. Once the application for transfer is submitted, the MCO is required to review the application within three days.<sup>16</sup> No timeline is provided for issuing a decision to register. In practice it appears to take up to 2 weeks. After the decision is issued, it is to be posted on the MCO notice board for five days before it is finalized.<sup>17</sup>

In the event the MCO refuses to accept the request for registration, the applicant has 30 days to request the MCO to reconsider. If the MCO does not change its decision, the applicant can request the KCA to review the application. If the KCA upholds the MCO decision, the applicant can seek independent judicial review.<sup>18</sup>

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<sup>15</sup> Art. 4 of Law No. 04/L-009, amending Art. 3.7 of Law No. 2002/05, "On Establishing the Immovable Property Rights Registry."

<sup>16</sup> Administrative Instruction No. 02/2013, "On Implementing the Law on Cadastre" (AI 02/2013), Article 8.5.

<sup>17</sup> Law No. 2003/13 On Amendments and additions to the Law no. 2002/5 on the Establishment of the Immovable Property Rights Registry, Article 1 paragraph 3.3b.

<sup>18</sup> Law on Cadastre, Law No. 04/L-013, Arts. 27 and 28.

# LEGAL ANALYSIS

## ANALYSIS OF UNCONTESTED LEGAL AND ADMINISTRATIVE PROCEDURES

Presented below is a critical assessment of the two steps mapped out above. The assessment identifies options and provides recommendations for developing more streamlined administrative procedures to achieve greater efficiency.

## REVIEW OF THE HEREDITARY ESTATE

Currently both courts and notaries are mandated to review hereditary estates in uncontested claims and there is on-going debate over which institution should exercise exclusive jurisdiction over them. Presented below is a comparative assessment of the capacity of courts and notaries to efficiently process these claims and ensure that safeguards are implemented to safeguard the rights of all potential heirs, especially female heirs. This assessment considers: A.) Qualitative nature of the review; B.) Constraints faced by courts and notaries to provide effective safeguards to prevent exclusion of heirs and coerced renunciation of the right to inherit, especially by women; and C.) Efficiency of services delivered by courts and notaries.

### A. QUALITATIVE NATURE OF THE REVIEW

Uncontested inheritance proceedings, by definition, do not contain any material issues of dispute. As such, the LUCP does not describe any evidentiary or adjudication procedures through which substantive issues of law or fact are to be determined. Instead, the law provides for a simple administrative review of the documents submitted by potential heirs in support of their claim to verify the documents' validity. Administrative reviews do not require judicial decision making and can be performed quickly and efficiently. The notary system was introduced into Kosovo to perform such functions.

Issues most prone to dispute during uncontested inheritance claims that would then trigger a contested claim in the court are valuation and division of the estate. Judges reported during a participatory assessment conducted by the PRP that these issues are the most complicated and time consuming to resolve. It is not surprising, therefore, that the LUCP encourages the potential heirs to form agreements on these issues and submit them to the court to be incorporated into the judgment of inheritance.

The key for achieving efficiency in processing inheritance claims is to ensure they remain uncontested and can be processed through a simple administrative review of documents. This requires providing potential heirs with assistance and the opportunity to resolve disputes that may arise during the process. Mediation appears to be an effective mechanism to provide this assistance.

For example, disputes over valuation of the estate often become protracted because of the absence of accurate and reliable market data in Kosovo. Market value is, however, the price that is agreed by the parties and actually paid for the property. Rather than relying on the court testimony of valuation experts to determine market value, mediation can assist the parties themselves to come to agreement over value. Assisting the parties to negotiate an agreement promotes both efficiency and a more sustainable outcome because it was achieved through consensus. It should also be noted that during a Differentiated Case Management (DCM) analysis recently completed by the PRP, it was found that although courts referred only a few contested property related cases to mediation (26 out of 1,829), all of those referred were successfully disposed through the mediation.

## B. CONSTRAINTS FACED BY COURTS AND NOTARIES TO PROVIDE EFFECTIVE SAFEGUARDS

There are two separate and distinct threats to the rights of potential heirs that must be safeguarded against. The first is coercion of potential heirs, especially female, to renounce their rights to inherit the family immovable property and cede these rights to brothers. The second is concealment and exclusion of potential heirs, often women, from participating in inheritance proceedings.

There are at present limited safeguards available to courts and notaries to protect against concealment and coercion of heirs. The most common safeguard reported by courts and notaries is the practice of conducting “additional inquiries” when there are suspicions of coercion and concealment.

Although both judges and notaries reported such inquiries have been successful for identifying additional heirs or persuading a female heir to withdraw her request to renounce her rights to inherit, these reports are anecdotal. It does not appear that all courts and notaries follow a standard practice of making additional inquiries. Thus, this is an ad hoc approach to safeguarding rights, and there is no empirical evidence with which to measure its effectiveness.

There is a fundamental difference between coercion and concealment. The identities of potential heirs that have been coerced to renounce are known to courts and notaries because they are required to declare their intention to renounce their rights. The identities of concealed heirs are unknown. It is necessary to tailor safeguards to the specific circumstances of each.

Coercion can be manifested in the form of societal attitudes and behaviors about the rights of women to inherit property. Some women may believe that they have no choice but to comply with society’s expectation that they will give up their rights to immovable property to keep it in the male blood line. Coercion can also be manifested by the woman’s family exerting direct pressure on her to renounce her rights.

Societal attitudes regarding women’s right to inherit property are consistent across all ethnic communities for which data exist. The National Baseline Survey on Property Rights indicates that, when asked whether men and women should have equal rights to own land, 85.1% of the majority community, and approximately 82% the non-majority community respondents agreed.<sup>19</sup> However, data on practices presents a different picture. When the same set of respondents were asked whether they could recall a case in their circle of acquaintances in which daughters inherited 65% of the majority community were unable to recall a single case compared to 17% and 39% of the non-majority communities (Serb and non-Serb respectively).<sup>20</sup> Non-majority communities were also more likely to report a registered female property owner in the household (41%) than the majority community (16%). Approximately one-third of respondents from all communities viewed cultural traditions to be the cause of different rates of property ownership for men and women.<sup>21</sup>

Currently, the MoJ, PRP and the European Union funded Civil Code and Property Rights Project are working together to develop more robust and systemic procedural safeguards to address the problem of coerced renunciation. Recommended safeguards may include the requirement that renunciation take place in special court hearings outside the uncontested proceedings. That said, while it may be recommended that renunciation take place outside uncontested proceedings, there is nothing that would prevent a court or notary from notifying the prosecutor’s office if they have suspicions that a potential heir is the victim of coercion.

This report will discuss in greater detail options for developing safeguards against the concealment of heirs that can be introduced into uncontested inheritance proceedings. These safeguards are

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<sup>19</sup> Tetra Tech. 2015. "National Baseline Survey for Property Rights in Kosovo." Pristina: USAID Property Rights Program, p. 21.

<sup>20</sup> Ibid. p. 23.

<sup>21</sup> Ibid. p. 28.

presented in the section below, “discussion of specific recommendations to strengthen safeguards against concealment and exclusion.”

To provide context for discussing safeguards against concealment, it is important to understand the circumstances that prevent courts and notaries from verifying the identities of all potential heirs. The primary constraint to identifying all potential heirs is the apparent lack of IT and data management capacity in the Civil Registry System that prevents CSOs from generating a complete, accurate and verified list of the deceased’s family members. In the absence of this capacity, information contained in the testimony of death document is provided by the potential heirs themselves.

The lack of CSO capacity to verify the identity of heirs impacts courts and notaries equally. Additionally, neither have the capacity and resources to independently verify the list of potential heirs themselves.

CSO officials interviewed for this report explained that civil status documents have been digitized and documents such as birth, death and marriage certificates can be searched and cross linked through an individual’s Personal Identification Number (PIN). The system does not, however, contain search functions that would enable the system to generate an accurate list of an individual’s family members by linking them to the individual through his or her PIN.

The technical constraints preventing the use of a PIN to produce a list of family members have not yet been clearly defined. Potential explanations may be that the system’s design architecture does not enable such a functional search. Or, it may be because PIN data have not been entered onto all the documents required to link family members to the deceased. It appears further assessment is required to determine the system’s technical limitations and in order that practical solutions to address them can be developed.

It should also be noted that the Law on Civil Status provides for the creation of a “Family Brochure” that is to contain the birth and death records for spouses and children from the marriage (Art. 19). CSO officials reported these brochures are not being issued currently because the implementing regulations guiding issuance of the brochures have not been drafted.

The family brochure, however, appears to be more of an interim measure to address current gaps in the Civil Registry System’s data base. The family brochure is kept in hard copy and is presented to spouses upon marriage (Art. 19.1). It is then the responsibility of the family to manually enter information about the marriage and subsequent births and deaths within the family. It would appear that the brochure will contain unverified information, similar to the information already provided in the testimony of death document.

Also, even if the family brochure contained verified data about a family’s composition, the Law on Civil Status provides that only data entered into the brochure after establishment of the Civil Status Registry (presumably 2011) are valid (Art. 19.4). The brochure, therefore, may not contain relevant data for older inheritance claims.

### **C. EFFICIENCY OF SERVICES DELIVERED BY COURTS AND NOTARIES**

As discussed above, because the LUCP does not prescribe notification procedures to initiate the review of the hereditary estate, courts rely on those provided in the LCP. The DCM assessment recently completed by the PRP documented disposition times for a representative sample of recently concluded contested cases. The assessment observed court management practices in the chambers of seven judges working in the Basic Courts of Ferizaj/Uroševac, Gjilan/Gnjilane, and Pejë/Peć that are also serving as “Courts of Merit” under the PRP project. The assessment documented that all seven judges applying LCP provisions waited approximately two years after the claim was filed to send out the notice of the hearing session. Additionally, judges interviewed for this report indicated that uncontested inheritance claims are not a priority for the courts and are treated last among the legal actions covered by the LUCP.

Notaries are not bound to follow the formal notification procedures prescribed in the LCP. As described above, unlike proceedings in the courts, notaries and potential heirs establish a service provider/client relationship. Notaries are more customer orientated and because they provide services in the market, they are incentivized to provide customer satisfaction. When notaries have questions or require additional information from their clients, they simply pick up the phone or send an email.

Simply by avoiding formal notification procedures and engaging in two-way communication with clients, notaries are able to process an uncontested inheritance claim in approximately 7–10 days.

It is not surprising, therefore, that citizens have been turning to notaries to process uncontested inheritance claims. Anecdotal information obtained from judges in three Basic Courts is that there has been a substantial decrease in the number of uncontested inheritance claims filed in the courts since the Law on Notary<sup>22</sup> was introduced in 2008 to provide notaries with jurisdiction over such claims. Unofficial data obtained from the Lipjan/Lipjane branch of the Prishtinë/Priština Basic Court indicate a 50% decrease in the number of uncontested inheritance cases filed in 2013 from the previous year.

Despite the efficiencies that notaries bring to the process, recently proposed amendments to the Law on Notary do not resolve confusion over whether notaries or courts have exclusive jurisdiction over uncontested inheritance claims. Additionally, the proposed amendments foresee that courts will refer inheritance cases to notaries but do not differentiate the types of claims to be referred or deadlines for doing so. The absence of clear referral criteria and deadlines will likely contribute to confusion over jurisdiction and unnecessarily delay processing of citizens' inheritance claims and formalization of their property rights.

Proposed amendments also do not address concerns over the fees charged by notaries to process the transfer of property rights from the deceased rights holder to his or her heirs. Currently, the fees are based on the value of the property, rather than the service provided by the notary, thereby constituting a *de facto* tax on citizens. The cost of this *de facto* tax and other fees notaries are authorized to charge may be disproportionate to the financial resources of the majority of Kosovo's citizens.

Lastly, there are concerns that the proposed amendments do not provide sufficient safeguards to protect women against coercion to renounce their inheritance rights. As discussed above, the MoJ is exploring options to remove renunciation from uncontested proceedings and require that it occur in a special court hearing. Assuming these safeguards are enacted, it would appear they need not be addressed in the Law on Notary.

## FINDINGS RELATED TO THE ROLE OF NOTARIES AND COURTS TO PROCESS UNCONTESTED INHERITANCE CLAIMS

The notary system was established to perform the administrative review prescribed by the LUCP. Provided the draft Law on Notary is further developed to address the issues discussed above, it would appear uncontested inheritance claims could be processed faster and more efficiently through the notary system.

Arguments in favor of courts retaining jurisdiction over these claims often cite the role of courts to protect rights and safeguard potential heirs, especially female heirs, from being coerced to renounce the right to inherit. Potential procedural safeguards being considered by the MoJ to protect against coerced renunciation, would appear to accommodate a process under which notaries would have jurisdiction to process uncontested claims to promote efficiency and courts would oversee the act of renunciation during a separate hearing.

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<sup>22</sup> Law on Notary, Law No. 03/L-10.



It should also be noted that the court system has limited resources and is faced with a significant, albeit decreasing, backlog of contested cases. The MoJ might consider reducing the burden on courts by providing notaries exclusive jurisdiction over uncontested inheritance claims to enable courts to focus their efforts to resolve contested cases and reduce backlog.

Regardless of whether notaries or courts are provided exclusive jurisdiction over uncontested inheritance claims, the key for achieving efficiency is to ensure they remain uncontested. Mediation appears to have significant potential to assist potential heirs to resolve disputes that may arise during the process. Mediation is not, however, widely used. Expansion of mediation services and educating potential heirs, courts and notaries about its benefits appears necessary.

While ensuring an efficient process helps create incentives for citizens to formalize their immovable property rights, it is essential it also provides safeguards to protect the rights of all heirs, especially women, to exercise their rights to inherit property. In addition to safeguarding against coerced renunciation, measures must be taken to prevent the concealment and exclusion of heirs.

Data management and IT limitations that prevent CSOs from producing a verified list of potential heirs creates opportunities to conceal and exclude heirs from inheritance proceedings. Both notaries and courts face the same constraints to independently verify the identity of all potential heirs. It is essential, therefore, to strengthen safeguards to protect against concealment and exclusion. These safeguards are discussed below.

## DISCUSSION OF SPECIFIC RECOMMENDATIONS TO STRENGTHEN SAFEGUARDS AGAINST CONCEALMENT AND EXCLUSION OF POTENTIAL HEIRS

### STRENGTHENING NOTICE PROVISIONS TO INCREASE TRANSPARENCY

As discussed above, it would appear necessary for the Civil Registration Agency to conduct an assessment of the Civil Status system's IT and data management capacity to determine if the system is capable of producing a verified list of potential heirs. If it transpires that the system is currently capable, or will have the required capability in the near future, this should help to significantly mitigate opportunities to conceal and exclude heirs.

The Civil Status system is, however, a nascent institution attempting to reconstruct a system whose data was significantly damaged and compromised in the aftermath of conflict. Consideration might be given to whether the data it produces moving forward will be of sufficient quality to ensure a completely accurate list of family members. The challenges may be considerable to produce an accurate list for immediate inheritance claims and will likely be greater for delayed claims in which the death occurred many years ago, especially if the deceased's PIN has not been entered into the system. For these reasons, it may be prudent to implement safeguards in addition to a CSO verified list of potential heirs. Publishing notice of the inheritance claim could provide an effective supplementary safeguard as demonstrated by experience from Estonia.

The 2008 amendments to the Estonian Law on Succession (ESL) include a mandatory requirement "that a notary shall publish a notice pertaining to the initiation of succession proceedings in *Ametlikud Teadaanded* not later than two working days after initiation of the succession proceedings (see §168 (1) of the 2008 LSA)."<sup>23</sup> The *Ametlikud Teadaanded* is an official online publication and public electronic database that is maintained by the Republic of Estonia's MoJ. The purpose of establishing the publicly accessible database and developing procedures to ensure widespread publication of notice "is to disseminate as much information as possible about succession proceedings being conducted by notaries, in order to provide maximal protection for the persons entitled to inherit."<sup>24</sup> The Government of Kosovo might consider requiring similar publication of notice for every

<sup>23</sup> Succession Law Procedure Coverage in Estonian Public Electronic Databases: *Ametlikud Teadaanded* and the Succession Register. <http://www.globalpropertyguide.com/Europe/Estonia/Inheritance>.

<sup>24</sup> Ibid.



uncontested inheritance claim and improving the quality and reach of the publication by developing enhanced notification procedures.

The internet penetration rate in Kosovo is 76.6%, a rate comparable to most developed countries.<sup>25</sup> Availability and access to the internet, popularity of social media and more affordable “smart” phones and similar devices create opportunities to develop enhanced notification procedures to more widely disseminate notice of proceedings to the largest number of people. Opportunities include publication of notice on Republic of Kosovo and civil society websites and in social media. Other forms of mass media including newspaper, television and radio and SMS delivered via mobile phone networks could be utilized as well. Additional outreach could be implemented through Kosovo’s embassies abroad to inform Kosovars in the diaspora.

Publication of notice should be based on requirements and procedures in other European countries such as Estonia that have proven effective and comply with European Union (EU) human rights and due process standards. To ensure that notice procedures meet EU standards, the Government of Kosovo might consider developing policies to guide their implementation in consultation with the EU and other international partners. Additionally, bilateral agreements with Serbia, Montenegro and the Former Yugoslav Republic of Macedonia might be considered so that publication of notice could provide due process safeguards to Kosovo Serbs displaced by the conflict who are parties in an inheritance claim.

Such enhanced procedures cannot effectively safeguard rights if they are not widely advertised and provide meaningful opportunities for potential heirs to obtain knowledge of the claim and information required to assert their rights. It will be essential to carefully monitor and document the actual reach of the procedures to demonstrate that due process standards are met.<sup>26</sup>

While widely publicizing notice of claims will help to make the proceedings more transparent and to provide all potential heirs and interested parties knowledge required to assert their rights, this may not be enough to ensure that potential heirs that might otherwise be concealed come forward to assert their rights. Some potential heirs, especially women, may be coerced to remain concealed.

Enhanced notice procedures could be combined with and reinforced by initiatives undertaken by the Office of the President and PRP to implement BCC activities to change cultural attitudes and behaviors about the rights of women to inherit family property. Information campaigns could also be developed to raise citizens’ awareness that concealing potential heirs and coercing them not to assert their rights to the estate are criminal offences in Kosovo.

By making uncontested inheritance proceedings more transparent and by promoting a culture of awareness and understanding of the harm caused by concealing heirs, those being concealed or other parties with knowledge of the concealment will be encouraged to come forward to end the concealment. It is equally important that citizens fully understand the consequences of actions to conceal or coerce heirs. Prosecution of these criminal offences would provide an effective means to ensure a better understanding of the consequences.

## CRIMINAL PROSECUTIONS

The Criminal Code of the Republic of Kosovo<sup>27</sup> provides that false statements or the omission of facts made under oath or in an affidavit is a criminal offense punishable to up to three years in prison (Art. 391). False statements made during court, minor offenses, and administrative proceedings, or before a notary are punishable by up to one year in prison. If the false statement is the basis upon

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<sup>25</sup> Fazliu 2013: 18.

<sup>26</sup> Effective notice is important also because not all heirs of the decedent may be known, as in the case of a child born out of wedlock, for example.

<sup>27</sup> Criminal Code of the Republic of Kosovo, Code No. 04/L-082, Article 195.

which a final judgment is made, the prison term can be increased to up to three years (Art. 392). Additionally, Article 195 of the Criminal Code provides that acts of force or serious threat committed by one person to compel another to do or abstain from doing and act or to acquiesce to an act shall be punished by a fine or imprisonment of up to one year.

It is noted that judges and representatives from civil society who monitor inheritance cases in the courts have expressed the opinion that prosecution of these offences would serve as an effective safeguard but that courts and notaries rarely refer such cases to the prosecution.<sup>28</sup> Instead, they tend to take a “hands off” approach to family matters. Judges expressed the preference to encourage members of the family to resolve the issues themselves rather than referring the matter to the prosecutor’s office. It appears notaries may simply refuse to process the claim and take no further action. This allows the potential heirs to then look for a notary that will process their claim. The failure to consistently prosecute criminal acts may send a signal to citizens that they can commit such offences with impunity, thereby encouraging their perpetuation.

Both courts and notaries have the same authority to refer cases to the prosecutor’s office when they suspect fraudulent documents or statements have been presented to conceal the identities of potential heirs. And, even if procedures are introduced that require renunciation of rights to occur in a separate court hearing outside an uncontested procedure, there is nothing to prevent a court or notary who suspects that coercion is occurring in an uncontested case from referring the matter to the prosecutor’s office. It is important, however, that courts and notaries be sensitized to the gravity of these offenses and be held accountable by the KJC and/or the Chamber of Notaries for failing to notify the prosecutor’s office of their suspicions of concealment and coercion. The KJC and/or the Chamber of Notaries should consider the viability of prosecuting judges and notaries for the criminal act of fraud as defined by Article 336 of the Criminal Code if there is evidence that the judge or notary knowingly allowed potential heirs to conceal facts for the purpose of excluding heirs.

## GENERAL RECOMMENDATIONS

1. The Ministry of Justice should decide, as a matter of policy and priority, whether courts or notaries should exercise exclusive jurisdiction over uncontested inheritance claims and amend the legal framework to reflect this decision to eliminate the confusion that exists today.
2. In the event the Ministry of Justice determines that the courts should have exclusive jurisdiction, courts should adopt the notification practices used by notaries for communicating with potential heirs, which have been demonstrated to be more efficient and reduce the time required to process claims.
3. The LUCP should be revised and amended to remove provisions that are inconsistent with Civil Status legislation and practices – for example, the requirements that CSOs notify courts when deaths are reported and prepare an inventory of the deceased’s estate.
4. The greatest opportunity for creating efficiency is to ensure that uncontested inheritance claims remain uncontested. This will also serve to reduce the burdens on an already over-burdened court system. Citizens should be provided clear and easy-to-understand information about their rights and obligations in inheritance proceedings, in order to mitigate the risk of disputes occurring.
5. Additionally, the LUCP should regulate and clearly describe the information that potential heirs need to submit in support of their claim; and simplified and standard forms for presenting the information should be developed and made available to citizens free of charge.
6. As mediation appears to be an effective tool to resolve disputes, citizens should be provided with information about mediation services through widespread and on-going media and grass

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<sup>28</sup> Opinions expressed during the PRP facilitated roundtable in April 2015 to discuss findings presented in the “Gender, Property and Economic Opportunity in Kosovo” report produced by the PRP.

roots dissemination campaigns supported by the Government of Kosovo and donor-funded projects. Mediation services should be expanded and made more accessible to citizen and the impact of the services provided rigorously monitored and evaluated to ensure services are delivered effectively to the satisfaction of citizens, in order to increase demand for mediation.

7. The Ministry of Interior and the Civil Registration Agency should assess the technical capacity of the civil registration system's IT and data management systems to automatically generate a verified list of the deceased's family members. If the system lacks the requisite technical capacity, the actions that must be taken to generate this list should be identified and documented in an administrative procedure.
8. Intense public outreach and BCC campaigns should be implemented to inform citizens about the criminal penalties for concealment and coercion and change their attitudes and behaviors towards these criminal acts. Potential heirs should also be required to take solemn oaths and sign affidavits attesting to the truthfulness and accuracy of their statements. It is likely that only one well-publicized prosecution would send a strong message to the public and act as an effective deterrent against concealment and coercion of heirs going forward.
9. The Government of Kosovo should develop policies to guide development of more robust notification procedures that take advantage of the country's high rate of internet penetration and utilize new technologies and social media to disseminate notice and information about inheritance claims both in Kosovo and abroad. Procedures should be modeled on those demonstrated effective in other European countries to meet EU human rights standards for providing due process. BCC messages should also be disseminated with notice of the claim to help change cultural attitudes and behaviors about women's rights to inherit property. Sanctions, potentially including prosecution of judges or notaries who allow potential heirs to conceal facts for the purpose of excluding heirs, should be instituted to establish consistent rules and institutional standards that will help demonstrate government commitment to protect the rights of all heirs, especially women, to inherit and will strengthen efforts to change cultural attitudes towards the rights of women.

## **TRANSFER OF RIGHTS IN IMMOVEABLE PROPERTY FROM THE DECEASED TO HEIRS**

This report does not attempt to provide a thorough and comprehensive business analysis of the entire immovable property registration process. Such an analysis, conducted in consultation with the KCA, would serve to identify registration fees and costs that exceed the economic means of the average Kosovo citizen; and registration requirements and procedures that are unnecessarily cumbersome, time consuming and unpredictable. Identifying and addressing such issues will help to remove barriers and disincentives to register rights conveyed through uncontested inheritance proceedings. Unless such barriers and disincentives to property rights registration are removed, efficiencies achieved in processing inheritance claims will be lost and government initiatives designed to encourage the formalization of rights will be frustrated. In lieu of a comprehensive business analysis, two issues are discussed below that could be addressed immediately and would make registration faster, easier and more affordable for citizens: the requirement of a cadastral survey in connection with registration; and municipalities' practice of requiring that all back taxes be paid as a condition for registration.

The Law "On Cadastre"<sup>29</sup> provides that a cadastral survey is required to "to enter a new cadastral unit in the cadastre or to change the data about an existing cadastral unit" (Art. 12). The Administrative Instruction (AI) "On Implementing the Law on Cadastre," however, is silent on this requirement.<sup>30</sup>

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<sup>29</sup> Law No. 04/-L-013.

<sup>30</sup> Administrative Instruction 02/2013.

Anecdotal information indicates that practice in some MCOs is to waive the survey requirement in inheritance cases where the applicant is seeking only recognition of his or her rights to the property, while requiring that a survey be conducted if the property right is to be transacted. This practice appears to recognize that property rights transactions (sale/purchase) involve the transfer of money, a portion of which can be used to pay the hundreds of Euros typically charged for a cadastral survey.

This practice appears, however, to be followed on an *ad hoc* basis and is not codified in the applicable legislation. It would appear that, in the absence of a transaction, many potential heirs seeking to only formalize their rights might lack the financial means to hire a surveyor. If so, the requirement to produce a cadastral survey could constitute an administrative barrier to formalization.

The AI “On Fees on Products for Registering Immovable Property Rights from Municipal Cadastral Offices”<sup>31</sup> sets the fees for registering rights. Fees are tied to the legal grounds upon which the rights are conveyed. These include transaction, gift, administrative or judicial decision, division of joint property, and inheritance, or “change.”

It appears that in practice, however, municipalities have also instituted the additional requirement that any back taxes owed on the property be paid before the MCO will issue the certificate of ownership required to initiate inheritance proceedings. Municipalities should consider whether this is an effective mechanism for increasing the collection of property taxes for Own-Source Revenue (OSR). One reason back taxes have accrued in delayed inheritance cases is because the rights holder in whom the property is registered is deceased. There is little incentive for living heirs to have paid taxes over the years on property not registered in their names.

The requirement to pay back taxes before initiating formalization proceedings might serve to discourage potential heirs from formalizing their rights. It might also constitute an administrative barrier if the amount owed exceeds their financial means. This would then perpetuate the informality that contributed to the accrual of back taxes in the first place.

In addition to the costs associated with surveys and payment of back taxes, unclear and cumbersome registration practices that do not support predictable outcomes create further disincentives to registering rights. The AI “On Implementing the Law on Cadastre” provides that the judgment issued by the court or a notary act must contain information describing the property that is “identical with the data registered into the Cadastre (unit number, the area, etc.)” (Art. 8.2). There are several reasons why information contained in a recent judgment or act may not reflect rights registered in the past.

First and foremost is the subject of this report, *delayed inheritance*. Because of the failure to initiate timely inheritance proceedings, rights have remained registered in the name of long deceased persons and cadastral records have not been updated. Additionally, the KCA instituted a new system for numbering parcels after the conflict that may not exactly correspond to the numbers assigned to parcels prior to the conflict. The history of transactions on a parcel would also contain gaps if the parcel was transacted after the conflict in a parallel Serbian court based on cadastral documents removed from Kosovo to Serbia. For these reasons, the rights and property data currently registered in the cadastre may no longer reflect the reality on the ground today.

Although the Law “On Cadastre” provides MCOs the authority to correct technical errors such as misspelled topographical names on maps or incorrectly entered personal identification numbers (Art. 17 referring to the definition of technical errors in Art. 1.19), the legislation does not provide clear guidance to MCOs to differentiate between a “technical” and a “material” error. Additionally, AI 02/2013 governs data correction but also does not distinguish between technical and material errors (Art. 19).

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<sup>31</sup> Administrative Instruction No. 08/2014, Articles 2–7.

In the absence of clear legislative guidance, it would appear that MCOs have instituted inconsistent practices to resolve technical errors or discrepancies between the legal documents conveying property rights, and the data contained in the cadastre. Additionally, the KCA, courts, notaries and relevant administrative agencies have not developed uniform templates for providing information required to describe the property to be included in decisions or other legal acts that convey property rights. As a result, minor issues such as misspelled names or discrepancies in parcel numbering delay registration of rights indefinitely, even when there is no evidence the discrepancies affect any material rights in the property.

Practitioners interviewed also noted that certain administrative requirements are time consuming and cumbersome. For example, parties are required to pay registration and inheritance fees at the bank and then return to the municipality to provide proof of payment. This often requires several visits to the MCO and the bank. All these factors can confuse and frustrate citizens and lead to unpredictable outcomes.

## RECOMMENDATIONS

1. Citizens will not be motivated to formalize their rights in immovable property (and initiate inheritance proceedings as a necessary step to formalize) unless they understand the benefits of formalization and are provided incentives to do so. Government formalization initiatives such as systematic registration of property rights and regularization of unpermitted constructions should be accompanied by intensive public information and awareness campaigns to change Kosovar's attitudes about formalization of property rights.
2. The Kosovo Cadastral Agency should conduct a full business analysis of its procedures to ensure registration requirements do not create barriers or disincentives to property rights formalization. The analysis should be designed and implemented to identify opportunities to make the process more affordable, efficient, transparent and predictable. It should conclude with the development of:
  - standard forms, templates and instructions to register and transact rights;
  - clear procedures and guidelines to ensure consistent registration practices in all MCOs;
  - training program for MCO staff to improve service delivery;
  - a simple, plain-language "how-to guide" to make the entire registration process more understandable for citizens and provide them the knowledge and information they require to register and formalize their rights;
  - policies that distinguish between the recognition/formalization of rights and the transaction of rights and guide the procedures, costs and fees citizens must follow and pay respective to each;
  - options to subsidize or waive the fees and costs charged to citizens seeking only the recognition and formalization of rights as is currently done in cadastral zones selected for reconstruction;
  - policies and guidelines for determining the circumstances under which cadastral surveys (typically the highest cost in the registration process) are required and those under which "general boundaries" are sufficient to demonstrate rights; and
  - policies developed in consultation with the Ministry of Finance to provide tax incentives to encourage the formalization of rights – for example a one-time amnesty for the payment of back property taxes, possibly linked with some form of inheritance tax relief.

## 2.0 DELAYED INHERITANCE: TARGETED APPLICATION OF ANALYSIS

### 2.1 APPLICATION OF THE CURRENT NON-CONTESTED INHERITANCE PROCEDURES TO THE MOST FREQUENTLY OCCURRING DELAYED INHERITANCE FACT PATTERNS

Immediate and delayed inheritance claims are distinguished by the length of time that has elapsed between the death of the immovable property rights holder and the initiation of inheritance proceedings. During the lengthy intervening period for delayed claims, it is not uncommon for property rights to have vested in some of the potential heirs, either *de facto* or through the legal doctrine of prescription.

The Law on Property and Other Real Rights<sup>32</sup> provides that a “proprietary possessor acquires ownership of an immovable property, or a part thereof, after twenty (20) years of uninterrupted possession” (Art. 40.1). It would appear that, if the potential heirs meet this requirement, they could seek recognition of their property rights based, not on their status as heirs, but on the basis of their continuous possession of the property.<sup>33</sup>

While not all potential heirs seeking formalization of their rights will meet the legal requirements for prescription, many have taken possession of the deceased’s land prior to initiating inheritance proceedings, made significant investments on it (often constructing homes) and are exercising *de facto* control over the property. It may also be that their possession of the property has been informally agreed to with the other potential heirs. The distinction between immediate and delayed inheritance claims is the latter can be characterized as a process to formalize rights that have, *de facto*, been exercised for years.

Additionally, during the period of time during which rights may have vested in the potential heirs who had taken possession of the deceased’s land parcel, the total number of potential heirs with a statutory share in the land will have typically grown large. All these potential heirs have the right to participate in the proceedings and will need to be contacted, making the process more cumbersome and time consuming.

In practice, the potential heirs who possess the deceased’s land typically take the lead to initiate inheritance proceedings to formalize rights they are actually exercising over the property. It is these heirs, therefore, who bear the responsibility to contact all the other heirs, obtain their documents and compel them to appear before a court or notary to either accept or decline their share in the estate. Additionally, these potential heirs are required to provide death certificates for any potential heir who died subsequent to the rights holder and prior to the proceedings, to demonstrate that he or she cannot inherit. Time consuming, cumbersome and frustrating requirements often dissuade potential heirs from seeking to formalize their legal rights.

The process can be even more difficult if a number of the potential heirs live outside Kosovo and have not maintained contact with the family. Additionally, some of these potential heirs, even if they can be located and contacted, may have no interest to participate in the proceedings. They may have started a life in a new country and are not interested to claim their share of the land parcel or they have no objection to the other potential heirs’ possession of the land and see no reason to involve themselves further.

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<sup>32</sup> Law No. 03/L-154.

<sup>33</sup> Pursuing a claim based on prescription, however, would require filing a contested claim with the court. This would not provide for an efficient and cost effective process for formalizing rights due to the time and expense of resolving contested claims in the courts.

It is essential, therefore, to develop delayed inheritance procedures to make it easier, faster and more affordable for potential heirs to comply with the procedural requirements to formalize their property rights. At the same time, the correct balance must be struck between efficiency and the provision of sufficient due process safeguards that are tailored to protect the rights asserted by all potential heirs and parties with an interest in the claim, especially women, from both majority and non-majority communities, who are subject to coercion to renounce their rights to inherit.

Presented below are the most common scenarios or “fact patterns” that have emerged from the failure to timely initiate inheritance proceedings and transfer rights in immovable property from the deceased to his or her heirs. Each is analyzed to identify issues that constrain efficiency and provide recommendations to address these constraints and to strengthen procedural due process safeguards.

#### Four Emerging Fact Patterns (FP):

**FP 1:** Immovable property is registered in the name of a deceased holder and currently possessed by heirs.

**FP 2:** Property registered in the name of a holder who informally sold it and then became displaced during the recent conflict.

**FP 3:** Property registered in the name of a deceased holder who informally sold it and the informal sale is not contested.

**FP 4:** Property registered in the name of a deceased holder who informally sold the property and the informal sale is contested.

#### FACT PATTERN I:

#### **IMMOVABLE PROPERTY IS REGISTERED IN THE NAME OF A LONG DECEASED RIGHTS HOLDER AND CURRENTLY POSSESSED AND USED BY SOME BUT NOT ALL OF HIS OR HER POTENTIAL HEIRS.**

This fact pattern appears to be the most frequently occurring and simplest to address with streamlined procedures. It also would appear to provide the greatest opportunity to quickly process a significantly large number of uncontested delayed inheritance claims to support government initiatives to assist citizens to formalize their rights to property.

Typical circumstances under this fact pattern are as follows: the immovable property is registered in the name of a rights holder who has been deceased for a significant period of time. During the intervening years, the number of potential heirs grew considerably (30 potential heirs would not be uncommon). Some of the potential heirs reside in Kosovo, others abroad. Only a few of the potential heirs exercise possession of the deceased rights holder’s land parcel because it is not large enough to sustain all the potential heirs. The potential heirs in possession of the property are those most interested to formalize their *de facto* rights in the property and are typically the ones who will initiate inheritance proceedings on behalf of all the potential heirs. Potential heirs who possess the deceased’s land parcel typically have informally subdivided the “mother parcel” registered in the name of the deceased rights holder and constructed their homes and other buildings on it. Because the subdivisions and changes to the mother parcel’s original land use designation (often referred to in cadastral documents as its “culture”) were not recorded in the MCO registry, cadastral records no longer reflect the current situation on the ground.

It is assumed for the purpose of analyzing this fact pattern that all the potential heirs are in agreement about all elements of the inheritance claim, including possession of the deceased’s land parcel by some of the potential heirs. For this reason, the claim can be treated as uncontested. It is also assumed that potential heirs who agree to the possession of the land parcel by other potential heirs will renounce their rights to take their statutory share of the land parcel. If the potential safeguard against coerced renunciation is enacted by the MoJ, renunciation under this fact pattern will need to occur under a separate court hearing.



## INHERITANCE PROCEEDINGS

Under both immediate and delayed uncontested claims all the potential heirs are required to declare whether or not they wish to take their statutory share of the estate. The LUCP provides that the potential heirs' declarations will be made during a court hearing session. The LUCP also envisions that the CSO will provide the court with notice of death and a verified list of all potential heirs and the court will then summon the potential heirs to the hearing session. If any of the potential heirs do not come forward to declare their intent the court will then allocate the potential heir his or her statutory share of the estate.

These LUCP provisions are based on the assumption that the CSO's notice and court's summons practices are sufficient to ensure all potential heirs and interested parties are provided notice of the claim and an opportunity to participate in the proceedings to meet standards for due process. The default position to resolve any procedural deficiency is to provide a statutory share of the estate to a potential heir who does not appear at the hearing.

It is clear from the discussion above that CSOs are not performing the tasks described in the LUCP and that court summons' procedures are not efficient and likely not robust enough to reach potential heirs living outside of Kosovo. In practice, it is then left to the potential heirs to notify all potential heirs to ensure due process is provided. This can be a daunting task considering the large number of potential heirs and that many of them may reside abroad.

Moreover, the typically large number of potential heirs in delayed inheritance claims makes it infeasible to simply allocate statutory shares to the potential heirs who do not participate in the proceedings. This could result in the land parcel being sub-divided to the extent that it could no longer be put to productive use and/or that making decisions over its productive use extremely difficult if not impossible. Either outcome would be counter to the objectives of formalizing rights in land.

To remedy gaps in the LUCP as applied to delayed inheritance claims, enhanced notice procedures could be further developed to provide all potential heirs and interested parties with "constructive notice" of the claim. Constructive notice is a legal doctrine that presumes all potential heirs and parties with an interest in the claim are provided with sufficient information and knowledge about the claim that can be acquired by normal means.<sup>34</sup> Different from actual notice, where information is physically delivered to the parties, constructive notice is a form of implied notice deemed by law to provide parties with the information required to participate in the claim and the opportunity to do so. It also cannot be contradicted legally.

Constructive notice, coupled with a statutorily defined deadline within which all potential heirs and interested parties would need to participate in the proceedings, provides opportunities for creating a more streamlined administrative procedure to process and resolve uncontested inheritance claims. Once constructive notice has been provided, any potential heirs or interested parties who do not participate within the statutory deadline would then be precluded from asserting rights to the estate.

It should be noted that constructive notice is a standard best practice utilized by cadastral systems and is applied in Kosovo. As described above, legislation governing the Immovable Property Rights Registry requires MCO decisions approving the transfer of rights in property to be posted on the MCO notice board for 5 days. The purpose of the notice is to provide parties with an interest in the property information about the transfer to enable them to object to the transfer or otherwise assert their rights in the property before the transfer is finalized.

The policy rationale underlying this procedure is that citizens must be diligent in exercising their rights in property. Land cannot be put to productive use if the failure of citizens to assert their rights causes its legal status to remain undefined indefinitely. In other words, if citizens fail to exercise their

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<sup>34</sup> In light of the 76.6% internet penetration in Kosovo, this would include notice on government and civil society websites, social media and any other form of mass media including newspaper, television and radio and SMS delivered via mobile phone networks.



rights despite being provided a meaningful opportunity to do so, it is in the public interest that these rights be forfeited. This rationale appears applicable to delayed inheritance claims as well.

**POTENTIAL RISKS.** The biggest potential risk is that the notice procedures are not sufficiently robust and the failure of a potential heir to participate in the proceedings was not because of a lack of diligence, but rather a lack of notice. Such risk is present in any process that employs constructive notice. The risk is deemed acceptable, however, if it is outweighed by the benefits of efficiency and finality in the adjudication of rights and if it can be mitigated with a notification process that is sufficiently robust. As discussed above, conditions for developing a robust notification process are currently present in Kosovo.

**ADVANTAGES.** Constructive notice procedures place the responsibility on each potential heir to assert his or her rights in the estate before the statutory deadline. This serves to remove from the potential heirs initiating the claim the responsibility for obtaining documents from all the potential heirs and ensuring their participation in the claim to either assert or waive their rights to the estate; thereby making the process simpler, easier and more efficient, thereby helping to encourage potential heirs to formalize their rights.

Allocating to each heir the responsibility for asserting rights would not, however, deviate significantly from current practice. The potential heirs most interested in formalizing rights will likely still have the incentive to “lead” the process to ensure that all potential heirs are in agreement to avoid the claim becoming contested. They would, however, no longer bear the sole responsibility to ensure the participation of all the potential heirs.

Constructive notice also protects potential heirs acting in good faith to formalize their rights from being prevented from doing so because not all potential heirs have participated in the proceedings to affirmatively declare their intent whether to accept or decline their statutory share of the estate. It may be that despite best efforts, the location of all potential heirs may not be known. Or, as noted above, there may be potential heirs who have no interest in the proceedings and simply refuse to participate in them.

As discussed above, under these circumstances the LUCP envisions that the court would assign a statutory share to any potential heir who does not participate in the proceedings. This remedy, however, is not feasible where there are large numbers of potential heirs who do not participate in the proceedings and awarding each a statutory share of the estate would result in the excessive fragmentation of the land parcel. Courts and notaries may, therefore, refuse to resolve the claim until all potential heirs make their intent known. In such cases, a potential heir’s unwillingness to participate in the proceedings may result in the legal status of the land parcel remaining undetermined indefinitely. The statutory deadline for asserting rights removes such uncertainties by providing a definite time period in which the rights of potential heirs will be recognized and clearly defined, thereby promoting finality and making the process more predictable.

**SAFEGUARDS.** While reducing the burden on potential heirs initiating the claim to secure the participation of all other potential heirs, constructive notice could also serve as a mechanism to make it more difficult for these same heirs who are already exercising rights to the land assets of the estate from increasing their share of the estate by coercing potential heirs, especially women, to renounce their rights to inherit or concealing or otherwise excluding other potential heirs from the proceedings.

**COERCION/RENUNCIATION.** As noted above, the MoJ, with the support of PRP and CCPR, is developing procedural safeguards against coerced renunciation that would be applied to immediate inheritance claims.

It is foreseen that these safeguards may include the requirement of a separate court hearing during which the court would ensure the decision to renounce was based on free will and with full knowledge of its economic impacts.

This potential safeguard could also be implemented under delayed inheritance proceedings that utilize constructive notice. Similar to immediate inheritance claims, potential heirs who do not wish to accept their share of the state would be required to renounce their rights in a separate court hearing. It should be noted, however, that there are qualitative differences between immediate and delayed proceedings that need to be taken into account when implementing this safeguard.

Under immediate claims, the safeguard is intended to prevent a harm from occurring. The potential safeguard of a special court hearing would serve to ensure that the potential heir's decision to renounce is freely made and informed with full knowledge of the economic consequences. If the court determines the potential heir's decision has been coerced, it can order the heir to take his or her statutory share of the estate.

In delayed inheritance, the harm has already occurred, when more powerful potential heirs coerced or otherwise prevented the other potential heirs from taking possession of the property. These potential heirs then typically constructed their homes and made investments on the land. In some cases, these potential heirs may have been in possession of the property long enough to acquire rights through prescription.

These circumstances, not uncommon to delayed proceedings, cast doubt on the feasibility of allocating statutory shares in the estate to potential heirs who were *de facto* coerced to give up rights in the property years ago and now wish to assert their rights, and limit the remedies available to them. Possible remedies might include a forced buy-out where the heirs in possession pay the excluded heir(s) the value of rights lost, or further sub-division of the mother parcel if possible. Pursuing such remedies would appear to require initiating a contested claim or possibly criminal prosecution. Even if the claim or prosecution is successful, enforcement of such remedies would likely not be without difficulty.

Considering the time required to obtain a court judgment, and the challenges of executing these remedies, it would be in the best interests of the parties to negotiate a settlement. Mediation would be a better alternative to contested court or criminal proceedings. Additionally, as discussed above, mediation is particularly well suited to address the types of complicated issues that would likely arise in such claims for remedy. It would also provide for a more peaceful and sustainable solution given the sensitive nature of the issues and the limited options for enforcing remedies such as a forced sale.

To promote efficiency, courts conducting the hearing should adopt the more customer-oriented approach followed by notaries. This would include establishing better two-way communication between the court and potential heirs to schedule and share information related to the hearing, to ensure that the hearings can be conducted quickly and in a timely manner. Otherwise, the efficiencies achieved through the constructive notice procedures may then be lost to excessive scheduling delays.

Consideration should also be given to the large number of potential heirs endemic to delayed claims. Because land parcels would be excessively fragmented and no longer productive if large numbers of potential heirs were given a statutory share, policies might be developed to limit the ranks of potential heirs eligible to claim a share of the land parcel.

Delayed claims typically also include potential heirs that live abroad. The LUCP provides that these heirs may submit notarized documents stating their intent to claim or not to claim their share of the estate. If safeguards are developed that would require renunciation to take place during a court hearing, procedures should be developed for potential heirs living abroad to meet this requirement by formally declaring in their country of residence their intention not to inherit. The procedures should be based on those developed to renounce rights in Kosovo to ensure that the potential heir's decision to renounce was made free from coercion or pressure and with full knowledge of its implications. It is likely the procedures would require development of a legal instrument that clearly describes the economic and property rights implications of renunciation. The instrument would also provide a template for providing a sworn declaration of the decision to renounce. A judge or notary

in the country of residence would read the information contained in the document and require the potential heir to confirm in writing that s/he understands the implications of renunciation. The sworn declaration would then be notarized and given effect in Kosovo.

**CONCEALMENT.** There is the risk for potential heirs to be coerced not to participate in the proceedings and, in effect, “conceal” themselves. Until such time that CSOs can produce a verified list of heirs, such coercion will be difficult to detect unless the court or notary has specific knowledge about the family.

Nonetheless, utilizing constructive notice could serve as a safeguard against concealment. The procedure allocates equally to all potential heirs the responsibility for asserting rights in the estate. This could reduce the influence and power currently wielded by those initiating and leading the submission of the claim (and who would benefit the most from concealing potential heirs). By equalizing the balance of power among the potential heirs, “space” could be created to help reduce pressure on potential heirs and encourage them to assert their rights.

Constructive notice procedures will also require implementation of a robust public outreach and education campaign to ensure that notice of the claim is disseminated widely to meet requirements for due process. This also serves to promote transparency, provide greater opportunities for potential heirs to participate in the process to help further safeguard against concealment and exclusion of heirs in the absence of a CSO verified list of potential heirs. Additionally, constructive notice would provide knowledge of the claim to interested parties who might not otherwise be notified because they are not required to be identified on the testimony of death document.

Combined with effective BCC strategies to change attitudes and behaviors towards women’s rights to inherit property and criminal prosecution for coercion, constructive notice procedures could empower weaker heirs to resist attempts to coerce them to forego their inheritance rights.

## REGISTRATION OF RIGHTS IN THE MCO

Upon obtaining the inheritance decision, the heirs will need to request the MCO to update the property registry to reflect the property rights transferred to them. As noted above, the “mother parcel” registered in the name of the rights holder in the cadastre will typically have been informally sub-divided by the heirs in possession. In such cases it is possible that the requirement to prepare a formal survey for the informal sub-divisions might exceed the economic means of the heirs and create a barrier to formalization of their rights. Gaps in cadastral data, including the history of the parcel may also complicate registration of the heirs’ rights in the cadastre.

## FACT-SPECIFIC FINDINGS AND RECOMMENDATIONS

Enhanced notice procedures providing effective constructive notice coupled with firm deadlines for asserting rights will serve to promote efficiency, timely resolution of uncontested and delayed inheritance claims and finality to the proceedings. Constructive notice procedures also accommodate the potential safeguards being developed by the Moj to prevent coerced renunciation and can help strengthen safeguards against concealment of potential heirs.

1. Policies on constructive notice should be consistent with EU guidelines on due process. The procedures should prescribe the venue of notice (official websites, embassies, institutions, social and other forms of media), frequency and duration of notice. Procedures might, for example provide for two stages of notice, the first when the inheritance claim has been filed and second, after judgment has been issued. The procedures should prescribe deadlines within which potential heirs and other parties to the claim can assert their rights and/or appeal the final judgment.
2. In addition to ensuring the constructive notice procedures meet EU human rights standards for due process, they should also be negotiated between Pristina and Belgrade under the auspices of the EU.

3. While separate court hearings could be held to ensure potential heirs who renounce are not coerced, courts should adapt notification practices followed by notaries to ensure hearings can be scheduled and conducted quickly. Given the large number of potential heirs who may decide to renounce, policies might be developed to limit the ranks of heirs eligible to take a share. Lastly, procedures should be developed that would allow potential heirs living abroad to renounce their rights in their country of residence. A litany could be developed that would be read by the court to the potential heir prior to the potential heir making a sworn statement to renounce.
4. To make it easier and more affordable for the heirs to register and formalize their property rights after obtaining the inheritance judgment, the KCA should consider developing registration procedures that would provide for a two-step process to formalize rights. The first would be to simply update the cadastral registry to reflect the heirs' joint ownership of the "mother" parcel. Once the rights of the heirs in possession of the property is recorded in the registry, they could complete formal subdivision at a later date, most likely when one of them wishes to transact his or her sub-divided parcel.
5. Cadastral registration procedures require that newly registered rights be published and publicly displayed for five days before they are finalized. To provide additional due process safeguards, however, the KCA might consider strengthening its notice provisions to extend the period of notification during which complaints against the registration may be lodged. At the conclusion of the deadline for filing complaints, the rights registered would be deemed final and the process would conclude.

## **FACT PATTERN 2:**

### **PROPERTY REGISTERED IN THE NAME OF A RIGHTS HOLDER WHO INFORMALLY SOLD THE PROPERTY AND WAS SUBSEQUENTLY DISPLACED FROM KOSOVO AS A RESULT OF THE CONFLICT IN 1999**

Because of the discriminatory legislation passed by the former regime during the 1990's, it can be expected that a significant number of informal contracts (verbal contracts not registered in the cadastre) will have been made between an ethnic Serb seller and an ethnic Albanian buyer. In such cases, the property remains registered in the name of the Serb who informally sold the property, although it is in the possession of the Albanian who informally purchased the property. Additionally, it is not uncommon for the informal Serb seller to have been displaced by the conflict and for his or her whereabouts to be currently unknown.

This makes it difficult for the informal purchaser to contact the informal seller and obtain evidence that the informal sale took place. Without this evidence, the informal purchaser cannot request the cadastral records to be updated to formalize his or her rights in the property. Moreover, because in many of these cases the informal seller was displaced, there is a potential risk that rather than being informal, the possession may have occurred illegally after the conflict.

Although this fact pattern does not fall neatly into the category of an inheritance claim, the primary constraints to formalization are similar to the fact pattern above. Under both, the current possessor of the land parcel seeking formalization is required to identify the parties, determine their location and provide them notice of the claim to secure their participation in the proceedings. Securing the participation of the party that informally sold the parcel (or his or her heirs if the seller is deceased), however, is perhaps even more challenging than locating family members in the fact pattern above because the seller may have no family ties to the purchaser.

Constructive notice appears particularly well-suited to help resolve such claims and provide an opportunity to quickly and efficiently formalize a significant number of property rights. Moreover, constructive notice could be applied to the backlog of decisions to be implemented by the KPA to finally resolve claims lodged by members of non-majority communities displaced by the conflict.

In the absence of constructive notice procedures there would appear to be few if any opportunities to formalize the rights of the informal purchaser through an uncontested procedure. It is unlikely that the informal seller (or his or her descendants if the seller is deceased) would have sufficient motivation to participate in the process even if s/he could be located and contacted by the informal purchaser.

Under current procedures, if the informal seller does not come forward to acknowledge that the sale occurred, the only options available to the informal purchaser to request the cadastral records to be updated to reflect his or her purchase of the property is to bring a contested claim against the informal seller to acquire rights in the property through prescription or obtain legal recognition of the informal contract.<sup>35</sup> Furthermore, as it appears unlikely that the defendant will be located, the court will need to appoint a temporary representative<sup>36</sup> before the case can go forward.

The Organization for Security and Cooperation in Europe (OSCE)<sup>37</sup> has expressed concerns about the quality of legal representation provided by temporary representatives to protect the interests of displaced members of non-majority communities. Additionally, the core legal issues to be determined in claims for prescription and recognition of informal contracts is whether the current possessor openly and continually possessed the property without objection from the formally recognized rights holder. This then raises the issue of whether parties to a claim in Kosovo who are currently displaced by conflict have adequate access to the property and to Kosovo institutions to diligently monitor and raise objections to occupation of his or her property. Such questions raise issues of both equity and applicable EU human rights standards.

The KPA is mandated to adjudicate property rights claims filed by displaced persons and provide remedies to enable claimants to repossess their properties. The KPA is required to fully implement approximately 30,000 of its decisions. A very significant challenge the Agency faces is to make contact with these claimants to provide them the opportunity to request a remedy.

The KPA reported during a PRP-facilitated workshop in June 2015 that of the approximately 30,000 decisions to be implemented, notice of the decision has been provided to 9,041 claimants that have not replied to the notice. There are an additional 7,660 claimants that will need to be contacted for the first time. There are also 2,749 claimants whose property is currently under KPA administration who will need to be contacted so that they may request an alternative remedy. The KPA expressed concerns that it does not have the resources to efficiently contact such a large number of claimants, the majority of whom are in Serbia. This challenge is further compounded by the political relations between Pristina and Belgrade.

The issues common to informal contracts between Serbs and Albanians and KPA decisions is to ensure that displaced persons currently registered as rights holders are provided sufficient information and notice of actions impacting their rights to property and sufficient access to institutions to provide the displaced rights holder a meaningful opportunity to participate in the actions and exercise their property rights. These issues highlight and underscore the need to develop policies for providing effective notice to parties involved in property rights claims that meet EU standards for due process.

Constructive notice provisions meeting standards for due process will safeguard the rights of displaced persons while at the same time efficiently moving the claim to final resolution to enable

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<sup>35</sup> These causes of action are discussed in greater detail under Fact Pattern 4 below.

<sup>36</sup> Law on Contested Procedure, article 79 provides that if it is deemed that the regular procedure of the first instance requires too much time for appointment of the legal representative for the defendant, and that this may cause damaging consequences to one or both parties, the court shall appoint a temporary representative to the defendant. Article 79.3 further provides that the court may appoint a temporary representative for the defendant also in the circumstances: a) if the residence of the defendant is unknown or the defendant has no authorized representative; b) if the defendant or his or her legal representative that do not have an authorized representative are out of country and it was not able for the materials to be sent.

<sup>37</sup> OSCE Mission in Kosovo Spot Report, The Appointment of Temporary Representatives in Property Disputes Involving Minorities as Respondent Parties, April 2005.

rights of the current possessor to be formalized in accordance with the law. Similar to the fact pattern above, once constructive notice is provided, the responsibility is then placed on the displaced person to participate in the proceeding or otherwise assert his or her rights in the property. Failure to participate or otherwise assert a right will be deemed to be an act through omission demonstrating that s/he is not asserting a right in the property and the matter can be concluded.

## FACT-SPECIFIC FINDINGS AND RECOMMENDATIONS

This fact pattern illustrates well the delicate balance to be struck between achieving efficiency and providing sufficient due process safeguards. It is essential that, fifteen years after the conflict, these outstanding property claims are brought to a final conclusion. It may well be that a significant number of displaced rights holders will not dispute the informal transaction and the rights of the possessors and, therefore, have no interest or motivation to participate in any way in a claim in Kosovo. If so, the possessors of the property are left with few options to formalize their rights. Constructive notice can serve to balance the need to provide the informal possessors of the property with the opportunity to formalize their rights and ensuring that the rights of the displaced are sufficiently protected.

1. In addition to ensuring the constructive notice procedures meet EU human rights standards for due process, they should also be negotiated between Pristina and Belgrade under the auspices of the EU.
2. Due to the human rights standards that need to be afforded to persons displaced by conflict, especially vulnerable populations and women members of non-majority communities, safeguards in addition to constructive notice should be considered. Such safeguards should ensure that properties subject to a KPA claim are clearly identified in the cadastral registry and rights over these properties are not updated in the name of or transacted by the current possessor until the claim is resolved. The KCA should ensure this information is readily available to displaced persons and the public at large to provide sufficient notice of the pending claim on this property.

### FACT PATTERN 3:

#### **PROPERTY REGISTERED IN THE NAME OF A LONG DECEASED RIGHTS HOLDER WHO INFORMALLY SOLD THE PROPERTY AND THE INFORMAL SALE IS NOT CONTESTED**

This fact pattern is a variation on Fact Pattern 1. The property is registered in the name of a long deceased rights holder who, prior to death, informally sold the property to a third party through a verbal contract and the transaction was not registered in the cadastre. The third party purchaser or his or her descendants (referred to hereinafter as the “possessors”) possess the property and now seek formalization of their rights. The descendants of the deceased rights holder do not dispute that the sale took place. Because the descendants of the rights holder do not dispute the sale, it is possible to transfer rights to the possessors through uncontested inheritance proceedings provided the descendants of the rights holder who sold the property are willing to participate in the proceedings.

Altruism need not be the only motivation for the rights holder’s descendants to assist the possessors. While they may be willing to assist to maintain peace and good relations between the families, they may also be willing to assist to avoid being named as defendants in a contested claim for prescription (described below). Additional policies might also be developed to create incentives for families to transfer property rights out of the name of a deceased ancestor. For example, they may be offered limited tax breaks on the property they own themselves.

To effect the transfer, the descendants of the rights holder will need to initiate an uncontested inheritance procedure to transfer to themselves the rights registered in the name of the rights

holder. The descendants will likely be more disposed to cooperate if uncontested proceedings are made faster, more efficient and affordable and utilize constructive notice provisions.

Once the rights holder's descendants obtain an inheritance judgment confirming that they are the legitimate heirs of the rights holder and have rights over his/her property, they can then transfer these rights to the possessors. The rights can then be transferred through contract or gift.<sup>38</sup> (The cadastral fees on gifts are lower than those on contracts for sale.)

It should be noted, however, that the process described above could be viewed as a form of "legal fiction." The descendants of the rights holder initiate an inheritance procedure to obtain recognition as "heirs" but in reality they are not asserting rights in the property. Instead, they are assuming only a temporary right in the property so that they can then transfer it to the possessors (who are the undisputed purchasers of the property) to enable them to formalize their rights.

The risk is that the heirs of the informal seller could, once they obtain the inheritance judgment, refuse to transfer the rights and instead register the property in their names. To mitigate this risk, the parties could execute a notarized agreement before initiating the inheritance proceedings that would bind the informal seller's heirs to transfer their temporary rights to the possessors once the inheritance process is completed.

It should also be noted that if the informal purchaser has died, his or her heirs (possessors) would not need to initiate inheritance proceedings. Instead, the rights holder's "heirs," once they obtain rights in the property, could simply transfer these rights directly to the possessors. As such, the informal purchaser's heirs do not need to take rights in the property from the informal purchaser.

Because the transfer to the descendants of the informal seller is to facilitate an immediate transfer to a third party, rather than to take possession of the property themselves, cadastral procedures may also need to be streamlined to provide for a single transfer and registration procedure in the MCO rather than two separate transactions each requiring payment of fees.

In the event the descendants of the informal seller are not inclined to participate in the process, there appears to be two legal actions that the possessors could initiate through contested procedures in the court to gain recognition of their property rights: the acquisition of rights through prescription and/or the legal recognition of the verbal contract. Both are discussed further under the following fact pattern below.

## FACT-SPECIFIC FINDINGS AND RECOMMENDATIONS

The difference between this fact pattern and the previous one is that the possessors of the property are not the heirs of the rights holder. This type of claim can be processed using the more efficient procedures described under the fact pattern above as long as the heirs of the rights holder perceive a benefit to participating in the process and the burden on their participation, in terms of cost and time, is minimal.

1. As part of any public information and outreach campaign to promote the registration and formalization of rights, descendants of rights holders should be provided positive messages to "sensitize" them to the challenges faced by the possessors of the property and to encourage them to assist the possessors. In addition to positive messages, the descendants of rights holders should also be informed that if they do not assist, they risk being sued in the court and incurring the costs and time demands such cases extract.
2. Rights holders' descendants could also be provided material incentives to assist the possessors. This might, for example, take the form of a limited reduction of the taxes they owe on properties they possess.

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<sup>38</sup> Law on Obligational Relationships, No. 04/L-077, Articles 536–540.

3. The KCA should develop a standard agreement form that would bind the rights holders' heirs to transfer the property rights to the possessors immediately after obtaining the inheritance judgment. This would help to streamline the process and ensure consistent practices in all MCOs.
4. KCA should also develop streamlined procedures to enable the parties to transfer the rights through a single transaction rather than two that would require payment of two sets of fees. Developing such procedures would also help to promote uniform and consistent practices in all MCOs.

#### **FACT PATTERN 4:**

#### **PROPERTY REGISTERED IN THE NAME OF A LONG DECEASED RIGHTS HOLDER WHO INFORMALLY SOLD THE PROPERTY AND THE INFORMAL SALE IS CONTESTED**

This fact pattern includes instances where the descendants of the informal rights holder/seller are unwilling to assist the informal purchaser or his or her heirs to obtain recognition of their rights or, worse, contest the validity of the sale solely for the purpose of extracting payment for the transfer. Practitioners interviewed report that it is not uncommon for demands for payment to be accompanied by threats.

In these situations, it appears that the only possibility for the informal purchaser or his or her heirs in possession of the property (referred hereinafter as the "possessors") to obtain recognition of their rights is to file a contested claim in the courts.

The volume of such claims is not currently known, but may become more frequent as initiatives encouraging citizens to formalize their property rights intensify. Although such claims cannot be resolved through streamlined uncontested administrative proceedings, consistent court practices related to the causes of actions underlying the contested claims could be developed to promote efficiency and more predictable outcomes in the courts.

The contested claims could be brought on the basis of the legal doctrine of prescription as discussed above. The possessors may also initiate a contested claim to obtain legal recognition of the verbal contract as provided in the Law on Obligational Relationships. Article 58 provides that a "contract for which the written form is required shall be valid even if not concluded in this form if the contracting parties fully or partly perform the obligations arising there from, unless it clearly follows otherwise from the purpose for which the form was prescribed."

To demonstrate acquisition through prescription, courts require the claimant to prove their possession was open and continuous throughout the entire twenty year period. Such possession can be proved through documents including:

- Building permission issued by the municipality demonstrating that the claimant invested in the property and when the investment was made;
- Loans obtained for the construction;
- Utility bills;
- Receipts for payment of tax on the property; and
- Any other relevant documents.

Courts also take statements from persons who witnessed the agreement between the buyer and seller or who have knowledge of other facts that would demonstrate the requisite twenty years of uninterrupted possession. It is then the role of the court to determine the reliability and accuracy of



the witnesses' statements and weight of evidence provided by the documents to issue a judgment to determine whether the claimant has proved his or her case.

To obtain legal recognition of the verbal contract, the claimant must first demonstrate that a verbal contract for the sale of immovable property was made and then demonstrate that s/he performed acts according to the terms of the contract and the performed acts were foreseen under the terms of the contract.<sup>39</sup> With regards to a contract for the sale of immovable property, taking possession of the property, constructing buildings on it and otherwise using the property as it was owned by the claimant would appear to satisfy these requirements. As with acquisition of rights through prescription, determining whether the claimant performed according to the verbal contract requires the court to conduct a fact specific inquiry and issue a judgment on the basis of the evidence submitted.

The process of obtaining recognition of a verbal contract may be more difficult than prescription because the claimant must produce witnesses to the contract to establish its existence. Obviously, there would be no documents that could be relied upon to establish this fact. Once existence of the contract is proved, the remaining facts to be proved are essentially the same under both causes of action: that the claimant took possession of the immovable property and used it as if it was owned by him or her. The Law on Obligations does not, however, prescribe the period for which the claimant must perform the terms of the verbal contract before it is legally recognized. In practice, therefore, it may have the effect of reducing the time required to acquire rights by prescription. There is no provision in the law that would prevent a claimant who cannot demonstrate 20 years of uninterrupted possession from acquiring rights in the property through Article 58 of the Law on Obligational Relationships.

## FACT-SPECIFIC FINDINGS AND RECOMMENDATIONS

The only difference between this fact pattern and Fact Pattern 3 is that here the rights holders' descendants are acting in bad faith and attempting to extort additional payments from the possessors. Notwithstanding the potential for filing criminal charges based on extortion, a more immediate sanction could be to require the descendants acting in bad faith to pay all legal fees and court costs of the possessors if the case is brought to court and judgment issued against them.

Recommendations for dealing with this fact pattern include the following, in addition to those made for Fact Pattern 3:

1. The information and outreach campaign discussed above could also be used to inform and educate descendants of rights holders acting in bad faith that they could be prosecuted for criminal offenses or required to pay all legal fees and court costs if their actions result in the filing of a lawsuit they lose.
2. Consistent judicial practice and "bench books" developed to help judges more efficiently, uniformly and predictably resolve claims for recognition of property rights based on prescription and legal recognition of a verbal contract.

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<sup>39</sup> Training Manual "Pre-Contract Liability, Formation and Interpretation of Contracts, November 2013, USAID.

## ANNEX I: LIST OF INTERVIEWEES

Location	Organization	Name	Position
<b>(Prishtinë/ Priština)</b>	Basic Court	Drita Rexhepi	Judge – Civil Division
	Basic Court	Hasim Sogojeva	Judge – Civil Division
	Appellate Court	Muhamet Rexha	Judge – Civil Division
	Appellate Court	Makifete Saliuka	Judge – Civil Division
	Notary	Faton Muslija	Notary
	Notary	Agon Vrenezi	Notary
	Department of Administration	Muhedin Nushi	Director of the DfA
	Municipal Civil Registry Office	Fehmi Kupina	Head of the MCRO
	Kosovo Chamber of Advocates	Ibrahim Dobruna	Head of the KCA
	Kosovo Chamber of Advocates	Yll Zeka	Staff of the KCA
	Private Attorney	Ekrem Smajli	Immovable Property Attorney
	Notary Chamber of Kosovo	Erdon Gjinoi	Executive Office
	Municipal Cadastre Office	Doruntina Peqani	Head of Legal Office
	Kosovo Civil Registry Agency	Shefket Ismajli	Dept. of Civil Registration and Civil Status
	Civil Society – KIPRED	Ariana Qosaj	Gender
Civil Society - Norma	Vjosa Nimani-Zylfiu	Retired Judge of the Supreme Court	
<b>(Gjilan/Gnjilane)</b>	Basic Court	Berat Spahiu	Judge – Civil Division
	Basic Court	Zyhdi Haziri	Judge
	Basic Court	Halil Zahiri	Judge
	Notary	Hivzi Murseli	Notary
	Municipal Cadastre Office	Sadudin Berisha	Director of Property, Geodesy and Cadastre
	Municipality CRO	Agim Velekinca	Head of the CRO
<b>(Ferizaj/ Uroševac)</b>	Basic Court	Faton Ajvazi	President
	Basic Court	Fejzullah Rexhepi	Judge – Civil Division
	Municipal CRO	Latif Berisha	Head of the CRO
	Municipal Cadastre Office	Fatmir Azizi	Director of Property, Geodesy and Cadastre

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