KOSOVO NATIONAL STRATEGY ON PROPERTY RIGHTS

October 2016
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## ACRONYMS AND ABBREVIATIONS

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<th>Full Form</th>
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<tr>
<td>AFLA</td>
<td>Agency for Free Legal Aid</td>
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<td>AI</td>
<td>Administrative Instruction</td>
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<td>CTG</td>
<td>Core Technical Group</td>
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<td>DP</td>
<td>Displaced Person</td>
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<tr>
<td>ECHR</td>
<td>European Convention on the Protection of Human Rights and Fundamental Freedoms</td>
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<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>FYROM</td>
<td>Former Yugoslav Republic of Macedonia</td>
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<td>GoK</td>
<td>Government of Kosovo</td>
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<td>HPCC</td>
<td>Housing and Property Claims Commission</td>
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<td>HPD</td>
<td>Housing and Property Directorate</td>
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<td>IPRR</td>
<td>Immovable Property Rights Register</td>
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<tr>
<td>KCA</td>
<td>Kosovo Cadastral Agency</td>
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<td>KPA</td>
<td>Kosovo Property Agency</td>
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<tr>
<td>KPCC</td>
<td>Kosovo Property Claims Commission</td>
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<td>KPCVA</td>
<td>Kosovo Property Comparison and Verification Agency</td>
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<td>LVC</td>
<td>Land Value Capture</td>
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<td>MCO</td>
<td>Municipal Cadastral Office</td>
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<td>MESP</td>
<td>Ministry for Environment and Spatial Planning</td>
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<td>MoJ</td>
<td>Ministry of Justice</td>
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<td>NSPR</td>
<td>National Strategy on Property Rights</td>
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<td>OPM</td>
<td>Office of the Prime Minister</td>
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<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
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<td>OSR</td>
<td>Own-Source Revenue</td>
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<td>PAK</td>
<td>Privatization Agency of Kosovo</td>
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<td>PCC</td>
<td>Property Claims Commission</td>
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<td>PRP</td>
<td>Property Rights Program</td>
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<td>PVAC</td>
<td>Property Verification and Adjudication Commission</td>
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<tr>
<td>RAE</td>
<td>Roma, Ashkali, and Egyptian</td>
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<td>RECAP</td>
<td>Real Estate Cadastre and Registration Project</td>
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<td>SAA</td>
<td>Stabilization and Association Agreement</td>
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<td>SAPD</td>
<td>Stabilization Association Process Dialogue</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>SFRY</td>
<td>Socialist Federal Republic of Yugoslavia</td>
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<td>SIDA</td>
<td>Swedish International Development Cooperation Agency</td>
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<td>SMS</td>
<td>Short Message Service</td>
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<td>SOE</td>
<td>Socially Owned Enterprise</td>
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<td>SWG</td>
<td>Sectorial Working Group</td>
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<td>TWG</td>
<td>Thematic Working Group</td>
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<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<td>UNMIK</td>
<td>United Nations Interim Administration Mission in Kosovo</td>
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<td>USAID</td>
<td>United States Agency for International Development</td>
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1.0 EXECUTIVE SUMMARY

Lack of clarity in immovable property rights legislation, widespread informality in the property sector and inconsistent enforcement of rights has weakened the security of property rights in Kosovo. Insecure rights in property impacts human rights, disempowers marginalized communities and impedes economic growth. The Ministry of Justice (MoJ) is leading development of Kosovo’s National Strategy on Property Rights (NSPR) to address these constraints to strengthen and secure property rights for all of Kosovo’s citizens.

The NSPR’s purpose is to provide a strategic vision for securing rights. It prioritizes and sequences interventions to clearly define property rights in law and to provide accessible, efficient and affordable mechanisms through which Kosovars can obtain legal recognition of their rights and then formalize their rights through registration in Kosovo’s cadastre. Rights formalized and registered in Kosovo’s cadastre can then be more efficiently and consistently enforced by the courts and government agencies providing greater security. To provide secure rights for all Kosovars, the NSPR recognizes the challenges faced by women, displaced persons (DPs) and members of non-majority communities to fully exercise in practice their rights to property and proposes specific measures to address these challenges. Finally, the NSPR will guide development of policies and legislation to promote more productive use of Kosovo’s arable land to help fuel economic growth. Unpermitted construction that has fragmented valuable agricultural land must be contained and prevented from continuing while more efficient privatization processes and incentives are required to ensure the remaining stock of arable land is fully utilized to increase agricultural production. Implementation of reform initiatives to secure property rights across all NSPR objectives will produce cumulative results that will strengthen the rule of law, support Kosovo’s integration into the European Union, and promote economic growth.

The MoJ, with the support of USAID’s Property Rights Program, initiated development of the NSPR by facilitating a two-day workshop in June 2015 which was attended by over 100 representatives from line ministries and government agencies, civil society, and donors and international partners working in the property rights sector. The workshop concluded with consensus on five “thematic pillars” clustering a wide range of the most relevant property rights challenges in Kosovo. Five concept notes were then developed to provide in-depth research and analysis of the property rights challenges under each pillar. Through a participatory and fully inclusive process through which government stakeholders contributed to development of the Strategy narrative and vetted its content, the five thematic pillars were transformed into five aspirational objectives the NSPR was designed to achieve.

Objective 1: Securing rights to property by strengthening the legal framework.

Kosovo’s property rights legal framework still retain concepts of socially owned property left over from the Socialist Federal Republic of Yugoslavia (SFRY) property rights legal framework. These concepts are no longer applicable in Kosovo and do not support development of a vibrant land market that will support economic growth. A significant portion of Kosovo’s housing stock was constructed on a type of socially owned land that was designated as “urban land for construction.” Under the former regime’s laws, private rights could only be conveyed in the building while “social rights” vested in the land. Until Kosovo’s laws are updated to allow private rights over the land, the building and the land underneath cannot be joined as a single property unit that could then be registered in the cadastre and transacted in the land market. Fragmented rights in the building and land limit its marketability and reduces its value. Moreover, reform initiatives to formalize rights in unpermitted constructions will be constrained until rights in the land upon which the building was constructed are clarified.

Additionally, socially owned arable agricultural land possessed by socially owned enterprises under the former regime were transformed through a 99-year lease rather than as a right of full ownership. Such leases are not commonly perceived as providing security of tenure, reducing investment to increase agricultural productivity.
The MoJ is currently developing a comprehensive civil code that will incorporate a stand-alone piece of legislation to regulate all private property rights. Rights over other types of property, including state, public and municipal, as well as the rights of foreign citizens to own property in Kosovo, are not clearly defined in law. Legislation defining property rights must be sufficiently accessible, precise and foreseeable in its application to meet basic standards of legal certainty and prevent arbitrary implementation.

**Key recommendations under this Objective include:**

a. Develop legislation to convert socially owned rights over urban land for construction and 99-year leases into a right of full ownership. The legislation should clearly state that the land and building constructed above it are joined into a single property unit.

b. Develop legislation to clearly define and regulate rights in non-private property including state, public and municipal, as well as the rights of foreign citizens to acquire and own property in Kosovo.

c. Conduct a systemic and comprehensive review of all legislation defining and regulating property rights to identify outdated and inconsistent provisions and amend accordingly to clarify and harmonize rights defined in law.

**Objective 2: Securing rights to property by addressing informality in the immovable property sector.**

Informality occurs when formal rights in property (rights registered in the cadastre) are not transferred from the formal rights holder through operation of law. Rights informally transferred are exercised *de facto* by the informal rights holder and generally respected by the community at large but cannot be registered in the cadastre. As a result, rights remain registered in the cadastre in the name of the formal rights holder who already transferred the rights, rather than the person currently exercising rights over the property.

Stakeholder consultations conducted during the development of this Strategy identified the following scenarios giving rise to informality in Kosovo today:

*Cadastral records that were not updated after the death of the rights holder because families failed to initiate inheritance proceedings.*

Kosovo Cadastral Agency (KCA) systematic registration and cadastral reconstruction data indicates that approximately 30% of all applicants attempting to formalize and register rights in immovable property are prevented from doing so because they have not initiated inheritance procedures and rights in the property they possess are currently registered in the name of a deceased ancestor. Additionally, anecdotal information indicates that up to 50% or more of applicants seeking to formalize rights over the more than 350,000 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 deceased rights holder.

Finally, it is of crucial importance that the records of the Cadastre and Immovable Property Rights Registry be fully open and easily accessible to the public. Democratic societies and market economies require openness and information in order to operate effectively and efficiently and to develop and grow. This is particularly true as concerns land and rights in land. Providing the public with full and easy access to cadastral records will increase transparency in governance; make important legal and economic information

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1 Private property rights are defined in the Law on Property and other Real Rights, as well as addressed in a number of related laws, such as the Law on Obligational Relationships, the Law on Inheritance, the Law on Non-Contentious Procedure, the Law on Contested Procedure and the Law on Establishing the Immovable Property Rights Register. The Law on Property and other Real Rights defines ownership as the most comprehensive property right on an asset authorizing the owner to freely use the asset, dispose of it and exclude others from any interference with it (Article 18).

2 Case law of the European Court of Human Rights; Novik v. Ukraine, No. 48068/06.

3 The report analyzed this issue and produced recommendations for streamlined administrative procedures to resolve delayed inheritance claims. USAID Kosovo, Property Rights Program. Informality in the Land Sector: The Issue of Delayed Inheritance in Kosovo, April 2016.

available to society; encourage foreign and local investment; and support the development of dynamic land markets.

Cultural norms and practices that regarded verbal contracts for the sale of land as sufficient legal security; and, discriminatory legislation that prohibited the sale of immovable property between Kosovo’s Albanian and Serbian ethnic communities, which encouraged informal sales contracts for immovable property that could not be registered in the cadastre.

In the past, the execution of verbal contracts for the sale of land and other immovable property was an accepted means for transacting property rights due to cultural and traditional norms practiced in rural areas of Kosovo. A significant percentage of these verbal contracts were executed between ethnic Serb sellers and ethnic Albanian buyers. Subsequent to 1991, even if a contract document for inter-ethnic sales of property existed, the transaction could not be recorded in the cadastre due to discriminatory legislation in effect at the time prohibiting such transactions.

Resolving such informality typically requires the Albanian buyer to initiate a contested claim in the courts to obtain a decision determining that a contract did exist and the rights in the property were freely transacted. Typically the seller has either left or was displaced by the conflict and cannot be located. Inability to secure testimony from the seller creates an evidentiary gap that both the informal seller and the courts have attempted to fill by relying on the legal doctrines of substantial performance and positive prescription to demonstrate the transaction occurred. Because both doctrines require the presence of the seller in the proceedings, courts frequently appoint a temporary representative to act in the interest of the seller. Appointment of a temporary representative, however, is a measure of last resort to be used after all means of notifying a party have been exhausted. The use of temporary representatives also raise human rights concerns because, in a post-conflict environment, there is the possibility that property was not voluntarily sold. Rather, it was usurped as a result of displacement. This may not be true for the majority of such cases but its possibility serves to cast a “cloud” over the rights to properties transacted informally, contributing to uncertainty in the land market.

The removal of cadastral documents to Serbia resulted in lack of updated cadastral data in Kosovo, creating a layer of confusion over evidence of property rights in Kosovo.

The practice of conducting transactions outside Kosovo’s cadastre was perpetuated by the removal of cadastral documents to Serbia just prior to the conflict. The Kosovo Property Comparison and Verification Agency (KPCVA) is mandated to review and compare all cadastral documents returned from Serbia against Kosovo’s cadastral documents to adjudicate (subject to right to appeal in the courts) the rights that will be finally registered in the Kosovo cadastre.

Key recommendations under this Objective include:

a. Develop procedures to make uncontested inheritance proceedings simpler, faster and more affordable to encourage potential heirs to initiate inheritance proceedings to formalize rights that can be registered in the cadastre. As a matter of priority, the MoJ should determine whether notaries or courts should exercise exclusive jurisdiction over uncontested inheritance claims.

b. Develop “enhanced” notification procedures to increase outreach required to inform all Kosovars, including those living in the diaspora, DPs and vulnerable communities who do not enjoy easy access to state institutions about proceedings that may impact their rights to property. Such proceedings include expropriation, demolition of unpermitted constructions, privatization of socially owned assets, duty to pay taxes, and any other claims seeking formalization of rights in property. The legal doctrine of constructive notice can be utilized to improve efficiency while ensuring the rights to due process are safeguarded. Constructive notice in delayed inheritance proceedings removes the burden on those seeking rights formalization to secure the participation of all interested parties. The doctrine also helps to provide finality for rights registered in the cadastre.

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c. Utilize efficient and low cost administrative procedures to provide citizens with the opportunity to obtain legal recognition of informal rights created under the scenarios above and enable them to be registered in the cadastre, subject to any appeals to the courts.

d. Revisions must be made to the Law on Data Protection and other relevant laws to provide a clear legal basis for the right of the public to have full access to the Cadastre and Immovable Property Rights Register.

e. Create incentives and identify and remove administrative barriers to encourage registration of rights in the cadastre. Excessive fees and inconsistent practices identified and eliminated and procedures and guidelines developed to ensure consistent registration practices in all Municipal Cadastral Offices.

**Objective 3: Guaranteeing and enforcing the property rights of displaced persons and non-majority communities.**

Universally recognized by the European Convention on Human Rights and its Protocols, international law and Kosovo's Constitution, people displaced by conflict have a right to return to their homes and immovable properties. Following the adoption of the “Principles on Housing and Property Restitution for Refugees and Displaced Persons,” also known as the “Pinheiro Principles,” the concept of return, as understood by the international community, has become “not simply the return to one's country for refugees or one's city or region for DPs, but the return to and re-assertion of control over one's original home, land or property; the process of housing and property restitution.”

In the wake of the conflict, a total of 42,749 property restitution claims were filed with the Kosovo Property Agency (KPA) seeking restitution of their immovable property. Most of the claims are filed by DPs and members of Kosovo’s non-majority communities.

The KPA claims resolution process comprises two phases. First, the claim must be adjudicated and the rights of the successful claimant recognized and provided legal effect through the KPA decision. Second, the KPA decision must be fully implemented by providing the successful claimant the opportunity to avail him or herself of the available remedies. The KPA has now adjudicated all claims filed. It should also now document that all its decisions have been registered in the cadastre. A KPA decision provides the legal basis for the successful claimant to request an eviction to regain possession of his or her immovable property. Registration of the KPA decision will enable Kosovo Police or private bailiffs to confirm the decision’s legitimacy making it easier for successful claimants to request an eviction.

Approximately 29,000 KPA decisions are pending implementation including decisions to place property under KPA administration and claims closed for non-cooperation based on the right of claimant to request re-possess or re-open the claim. The recently passed Law on the KPCVA essentially transforms the KPA into the KPCVA and mandates its Executive Secretariat to fully implement KPA decisions. In the aftermath of Kosovo’s conflict, final resolution and implementation of successful claims adjudicated by the KPA is the priority intervention to strengthen and guarantee rights of the country’s non-majority communities.

Remedies to be provided by the Executive Secretariat include evicting the current occupant to restitute and return the property to the possession of the successful claimant, placing the property under KPCVA administration, including the property in a rental scheme, and sale of the property through auction. The KPCVA is required, within 18 months of the law taking effect, to contact all successful claimants and inform them that it shall conclude its mandate to administer and rent successful claimants’ properties. The legislative intent for this deadline is to finally conclude the temporary mandate of the KPA and not to unilaterally impose on DPs an 18-month deadline within which they must exercise their rights to a remedy.

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The GoK is committed to fulfilling its duties and human rights obligations after conclusion of the KPCVA mandate to provide DPs with final, fair and effective remedies that will enable them to re-assert control over their immovable properties. Administration of a successful claimant’s property was only intended as an interim measure until the claimant chose a final remedy. Final remedies include providing successful claimants with an eviction so they may take possession of their property at any time in the future, placing their property in a rental or leasing scheme, and offering the property for sale through an auction. The GoK will explore options to transition implementation of these remedies from the KPCVA to the Kosovo Police, private bailiffs and private real estate rental and leasing firms. The strategic priority for the GoK now is to begin to develop a plan of action to guide this transition.

Key recommendations under this Objective include:

a. Ensure that the full range of remedies currently provided in law will be made available to successful claimants and implemented during the temporary mandate of the KPCVA. The KPCVA should lead the handover process of its functions, if not complete during its mandate, to relevant institutions. Such functions include property administration and rental scheme after the 18 month period, or other KPA functions after the conclusion of the KPCVA mandate.

b. Improved means for communicating with DPs should be established. Utilization of “enhanced notification” would make it possible to place the responsibility to request remedy with the successful claimant, rather than requiring the KPCVA to directly contact each successful claimant. It would also facilitate two-way dialog between the KPCVA and successful claimants to provide information successful claimants will need to access remedies from the private sector after the KPCVA mandate concludes.

c. To prevent illegal re-occupation after a KPA eviction, develop procedures that would require the KPCVA (or enable a successful claimant after conclusion of the KPCVA mandate) to request the Kosovo Police or private bailiff to immediately enforce the original KPA eviction order prior to referring the matter to the Prosecutor’s Office. Internal guidelines should be developed for prosecutors to seek criminal penalties for illegal re-occupation and be trained to effectively prosecute criminal charges to deter illegal re-occupation in the future.

d. Implement “enhanced notification” procedures in all proceedings impacting rights to property, including expropriation, demolition of unpermitted constructions, privatization, delayed inheritance proceedings and any other claims seeking formalization of rights in property to ensure DPs have access to information required to protect their rights to property.

e. Revise eligibility criteria for free legal aid to include DPs and persons residing in informal settlements; and, substantially increase government funding for the free legal aid program.

f. Introduce unified court fee regulations, whereby DPs in precarious socio-economic conditions are exempted from paying court expenses (DPs’ occupied properties should not be counted as personal wealth).

g. Fully implement in practice the provisions contained in Law No. 02/L-37 “On the Use of Languages” to ensure members of non-majority communities can access information and fully participate in proceedings impacting their rights to property.

h. Harmonize and implement the Strategy for Regularization of Informal Settlements 2011-2015 with provisions of the Law on Spatial Planning and procedures to regularize unpermitted constructions to provide comprehensive and sustainable solutions for the 100 informal settlements primarily inhabited by members of the Roma, Ashkali, and Egyptian (RAE) communities.

Objective 4: Guaranteeing and enforcing the property rights of women.

Article 46 of Kosovo’s Constitution guarantees the rights of all citizens to own property; but, women struggle to overcome cultural barriers to inherit immovable property from their birth families and spouses and widespread informality that prevents them from registering their ownership rights in the cadastre. According to the 2011 census, women make up 49.6% of the Kosovo population, yet only 15.24% of women have property registered in their name. When women do not control property, they cannot be full
economic actors. Moreover, women’s asset ownership has been demonstrated to have a positive benefit for the well-being of families.

Women’s concealment from the death act or renunciation of their rights to inherit family property rights is a major obstacle that prevents women from becoming property owners in Kosovo. Due to tradition, cultural norms that favor patrilineal inheritance, and family expectations for women not to inherit the real estate from their birth families, women often decide to renounce their rights to inherit in favor of their brothers.

Widespread informality with regards to marriage contracts places women in a vulnerable position concerning their property claims. They are excluded from inheriting from their partner unless they can demonstrate cohabitation for 10 years or for 5 years with children. Women are also excluded from inheriting from their birth families because they are not included in the Act of Death. This is a declarative document intended to list all the family members eligible to inherit immovable property. Currently, Municipal Civil Registry Offices, Courts, and notaries do not have the means to independently verify the accuracy of the Act of Death document, creating ample opportunities for families to exclude women heirs.

According to the Law on Inheritance, women who renounce their property rights also renounce the rights on behalf of their children, who are minors. This practice is in discordance with European standards regarding the rights of children. In Kosovo, where minors are a large percentage of the population, this significantly impacts a national welfare interest.

**Key recommendations under this Objective include:**

a. Consistent recognition of factual marriages after five years of cohabitation, or three years if there are children involved.

b. Require heirs who bring an inheritance action to a notary or a judge should swear, upon penalty of law, that they are not concealing any known heirs. In parallel, data management capacity of the Civil Registry System should be improved to enable municipal offices to produce an accurate and reliable list of the deceased’s family members.

c. Any heirs declaring their intent to renounce their right to inherit should be required to make this declaration at a special session before a judge or notary. It is essential that during this session female heirs are fully informed about their rights and the value of their portion of the estate that they intend to renounce before taking a final decision.

d. To foreclose the possibility that a surviving spouse will lose the right to inhabit his or her home, the Law on Inheritance should be amended to delay the mandatory estate distribution until after the death of the surviving spouse to allow the living spouse access to the marital home and property until death. An alternative approach would be to allow the surviving spouse use rights to the marital home and property until their death or remarriage.

e. Article 130.3 of the Law on Inheritance should be amended to require oversight of a custodial body whenever courts decide on cases regarding the renunciation of the rights of minors. The custodial body described in Kosovo’s draft Law on Child Protection is the most appropriate type of oversight for the protection of the best interests of the child.

**Objective 5: Promoting productive use of immovable property to fuel economic growth.**

Promoting growth in the agriculture sector is a key component in the Government of Kosovo’s program for fueling Kosovo’s economic development. Excessive fragmentation of land parcels and unpermitted construction over the past 15 years has significantly reduced the amount of arable land available for investment in Kosovo’s agricultural sector, reducing agricultural productivity and potential for economic growth.

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The Law for Treatment of Constructions without Permit was passed to regulate the process of legalizing unpermitted constructions. It was intended to formalize rights in the building so they may be registered in the cadastre and transacted in the land market or used as collateral to secure finance for investment. It was also intended to ensure unpermitted constructions are no longer the norm in Kosovo. The law in its current form provides only the opportunity to formalize rights to occupy the unpermitted construction. It does not provide a mechanism to formalize rights in both the building and the land as a single property unit that can then be registered in Kosovo’s cadastre and transacted in the land market.

The law also contains rigid criteria for excluding from the amnesty scheme, without exception, unpermitted constructions based on the type of land. All unpermitted constructions built on Public Property are excluded. The bulk of unpermitted construction exists in city and town centers designated as “urban land for construction” under the former regime. This category of land has been transformed into Public Property. Unless the law is amended to address this issue, most unpermitted constructions in city and town centers will have to be demolished, contradicting the policy objective the law was intended to achieve.

The law did not provide for sufficient notification to all Kosovars, particularly those in the diaspora and DPs, to enable them to comply with the laws deadlines. Strict enforcement of the deadlines would result in demolition of their properties and violation of their human rights. The law also requires payment of fees that exceed the economic means of many Kosovars, creating an administrative barrier to formalization of their rights.

In 2013, the GoK passed a new Law on Spatial Planning to address past deficiencies in the planning process that led to proliferation of unpermitted constructions and land fragmentation. As the law is implemented, mechanisms to monitor implementation of the plans, coupled with stronger penalties for unpermitted construction will help prevent unregulated urban sprawl and encroachment onto arable land best suited for agricultural production. The GoK can also begin to move from a process focused solely on regulating spatial planning to a process that includes the development and management of land. This will provide incentives to encourage land consolidation projects in both rural and urban areas. In the course of developing and implementing spatial plans, the GoK must comply with Kosovo’s Constitution and legislation, and the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) standards.

The Privatization Agency of Kosovo (PAK) is mandated to privatize “socially owned” land mainly consolidated to increase investment in arable land to increase agricultural productivity. Thus far, 22,000 hectares of socially-owned arable land have been sold and 17,000 hectares of arable land have yet to be privatized. Privatization has not produced the expected level of investment and agricultural productivity because spatial plans in place have not been effectively enforced, encouraging investors to either build unpermitted constructions on arable land or to simply hold on to the land for speculative purposes. A litigious environment surrounding the privatization process further inhibits productive use of arable land as investors have been forced to devote time and money to defend against groundless lawsuits.

Arable land is privatized through a 99-year lease. This unfamiliar form of private land tenure concerns investors that do not accept the tenure as secure enough to justify making investments in the land in order to increase agricultural productivity. This perception of insecurity creates further incentives for speculative investments in the land.

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Although fifty-three percent (53%) of the total land area in Kosovo is classified as agricultural land, much of it is left fallow. No cost is incurred when land is left fallow because it is not taxed. A transparent, fair and effectively implemented land and immovable property tax regime will create an incentive for the owners of arable land to either produce crops to recoup the cost of taxes or sell or lease the land to others who will put the land to more productive use.

The primary constraint to implementing a market value tax scheme is the development of a methodology to determine market value in the absence of accurate and reliable data about actual prices paid for immovable property. There is also limited capacity in the private sector, and almost none in the public, to conduct market-based valuations.

A tax on property constitutes a restriction on an individual’s property rights. In levying taxes, a proper balance must be struck between the legitimate aim of generating revenue to achieve public policy objectives and mitigating risks of creating excessive demands on low income and poor families.

Key recommendations under this Objective include:

a. Treating unpermitted constructions
   i. The Law on Treatment of Unpermitted Construction should be amended to create incentives to encourage formalization and provide the legal mechanism through which applicants can formalize rights in the both the building and land as a single property unit and then register their rights over this property unit in Kosovo’s cadastre so the rights formalized can be transacted in the land market.
   ii. To ensure the overarching objective of the amnesty scheme is not frustrated, exemption clauses should be developed to provide a more flexible approach to determine eligibility. This is preferable to rigid categorical exclusions that would preclude large numbers of otherwise suitable unpermitted constructions from being formalized.
   iii. The formalization process must be accessible to all Kosovars. Legalization Taxes and Fees should be reduced for Kosovars with low incomes and cumbersome administrative barriers, such as the requirement to provide architectural drawings with applications, should be eliminated. Incentives should be developed to encourage women-headed households to formalize their property rights. It is essential that due process safeguards are in place to ensure land owners have information and knowledge to protect their rights. Enhanced notification procedures should be utilized to ensure all land owners, especially those in diaspora, DPs and members of non-majority communities are provided notice to enable them to participate in the proceedings.

b. Land consolidation through effective spatial planning
   i. Procedures to obtain building permissions should be made simpler, more affordable and transparent to encourage citizens to follow planning procedures and prevent further land fragmentation.
   ii. Municipalities should increase emphasis on monitoring and enforcing spatial plans and strengthen enforcement powers of building inspectors to prevent unpermitted construction at the time actual construction begins. Penalties in Kosovo’s Criminal Code and administrative instructions should be rigorously enforced to serve as an effective deterrent.
   iii. After strengthening mechanisms to enforce spatial plans, municipalities should begin to implement Land Value Capture (LVC) tools to encourage land consolidation and promote development objectives.
   iv. Any public development projects that require expropriation of private land must comply with the provisions of Kosovo law and applicable human rights standards. This requires clear criteria for


determining whether the expropriation serves a public interest and, if so, that adequate compensation based on the market value of the land expropriated is paid to its private owner.

c. **Privatization of SOE arable land**

i. Conversion of the 99-year lease issued by PAK into rights of full ownership will provide investors greater security of tenure and encourage investments in the land to increase agricultural productivity.

ii. Mechanisms must be strengthened to ensure that purchasers put arable agricultural land to productive use rather than as a speculative investment. If PAK lacks the mandate or resources to monitor and enforce the terms of the privatization sale, the GoK should either expand its mandate and resources or create another body to carry out this function.

d. **Create incentives to encourage market transactions and productive use of agricultural land**

i. Imposition of a tax on land will create an incentive for owners of arable agricultural land to either use the land for agricultural production or lease the land to someone that will.

ii. Procedures must be developed to guide market-based appraisals and require reporting of actual prices paid for immovable property and recording this information in the cadastre. The use of private appraisers should be considered.

iii. The tax rates imposed by the GoK should be calculated not to exceed the ability of Kosovars to pay. Policies will need to be develop to provide tax relief for poor and vulnerable members of Kosovo society.

Once an accurate, fair and equitable tax rate is established, capacity at the municipal level must be built to efficiently deliver tax bills and collect taxes. Effective collection of tax revenue will significantly increase the amount of own-source revenue (OSR) generated by the municipality.
2.0 INTRODUCTION

Lack of clarity in immovable property rights legislation, widespread informality in the property sector and inconsistent enforcement of rights weakens the security of property rights in Kosovo. Insecure rights in property impacts human rights, disempowers marginalized communities and impedes economic growth.

The National Strategy on Property Rights (NSPR) provides a strategic vision for securing rights. It prioritizes and sequences interventions to clearly define property rights in law and to provide accessible, efficient and affordable mechanisms through which Kosovars can obtain legal recognition of their rights and then formalize their rights through registration in Kosovo’s cadastre. Rights formalized and registered in Kosovo’s cadastre can then be more efficiently and consistently enforced by the courts and government agencies and afforded greater security. To provide secure rights for all Kosovars, the NSPR recognizes the challenges faced by women, displaced persons (DPs) and members of non-majority communities to fully exercise their property rights in practice and proposes specific measures to address these challenges. Finally, the NSPR will guide development of policies and legislation to promote more productive use of Kosovo’s arable land to help fuel economic growth. Unpermitted construction that has fragmented valuable agricultural land must be contained and prevented from continuing while more efficient privatization processes and incentives are required to ensure the remaining stock of arable land is fully utilized to increase agricultural production.

The NSPR is viewed by the Government of Kosovo (GoK) as necessary to help achieve the nation’s development objectives, including compliance with its obligations under the Stabilization and Association Agreement (SAA) it executed with the European Union (EU). The NSPR will also serve as an integral part of Kosovo’s five-year economic reform program, encompassing a comprehensive portfolio of policy measures on human capital, rule of law, competitiveness, and infrastructure. Furthermore, the National Program for Implementation of the SAA, adopted by the Kosovo Assembly on 10 March 2016, called for a sectorial strategy on property rights, to guide development of a property rights legal framework that is aligned with market-oriented policies and will help to stimulate foreign investments. The NSPR has also been included in the conclusions of two recent Stabilization Association Process Dialogue (SAPD) Sectorial Meetings on Justice, Freedom and Security (26-27 January 2016) and on Internal Market, Competition, and Health Protection (02 February 2016).

The Ministry of Justice (MoJ), with the support of USAID’s Property Rights Program, initiated development of the NSPR by facilitating a two-day workshop in June 2015, which was attended by over 100 representatives from line ministries and government agencies, civil society, and donors and international partners working in the property rights sector. The workshop concluded with consensus on five “thematic pillars” clustering a wide range of the most relevant property rights challenges in Kosovo. Five concept notes were then developed to provide in-depth research and analysis of the property rights challenges under each pillar. Through a participatory and fully inclusive process during which government stakeholders contributed to development of the Strategy narrative and vetted its content, the five thematic pillars were transformed into the five aspirational objectives the NSPR was designed to achieve.
3.0 OBJECTIVES

The overarching objective of the NSPR is to assist the Government to secure the property rights of all its citizens. The MoJ, based on in-depth analysis of the most pressing land tenure and property rights challenges, and in consultation with stakeholders, has determined that the NSPR must achieve the five aspirational objectives presented below to secure rights to property in Kosovo.

Secure property rights requires that the legal framework is strengthened to clearly define the rights and responsibilities of citizens and government; the property rights of women and members of minority communities are guaranteed by law and enforced by government agencies and courts so they can be fully exercised in practice; and rights to use land are regulated to protect valuable land assets such as arable land and to encourage its productive use.

Objective 1: Securing Rights to Property by Strengthening the Legal Framework

Kosovo’s legal framework must be updated and harmonized to support economic development in a market economy. Legal concepts from Kosovo’s socialist past must be removed and rights and responsibilities of citizens and government entities must be clearly defined in law to provide the basis for a vibrant land market to support economic growth.

Objective 2: Securing Rights to Property by Addressing Informality

Citizens must be provided access to efficient and affordable administrative processes to obtain legal recognition of rights they are currently exercising de facto. Legal recognition of these rights will enable citizens to register their rights in the cadastre so they may be more efficiently enforced by courts and government agencies and transacted in the land market.

Objective 3: Enforcing and Guaranteeing the Property Rights of Displaced Persons and Non-Majority Communities

Strengthening, protecting and enforcing the property rights of displaced persons (DPs) and members of non-majority communities is a mandatory requirement for Kosovo to comply with applicable human rights standards and its obligations under the SAA with the EU. DPs must be provided with fair, effective and final remedies to regain control over immovable property and land lost during the conflict and the rights of all members of non-majority communities to exercise their rights in practice must be guaranteed to strengthen the rule of law in Kosovo.

Objective 4: Enforcing and Guaranteeing the Property Rights of Women

Women comprise more than half of Kosovo’s population. Impediments preventing them from property ownership hampers the country’s economic growth and social welfare. Guaranteeing the rights of women to exercise their rights to property in practice will also strengthen the rule of law, promote economic growth and support EU integration.

Objective 5: Using Secure Rights to Property to Fuel Economic Growth

Secure rights to property does not provide for unlimited use of these rights. Rights must be limited and regulated, to the extent allowed by Kosovo’s Constitution and applicable human rights standards, to protect valuable land assets such as arable land and to encourage its productive use.

Implementation of reform initiatives to secure property rights across all five NSPR objectives will produce cumulative results that will strengthen the rule of law, support Kosovo’s integration into the European Union, and promote economic growth.
4.0 METHODOLOGY

The Ministry of Justice (MoJ) established three layers of technical and oversight bodies to ensure Kosovo’s first ever land tenure and property rights sectoral strategy identified and proposed implementable solutions to address the core challenges and constraints to securing property rights for all the country’s citizens:

**Level 3: Sectorial Working Group (SWG)** Established to provide overall strategic guidance.

**Level 2: Thematic Working Groups (TWGs)**
Established to address five clusters of issues identified by SWG.

**Level 1: Core Technical Group (CTG)**
Established to take the lead in drafting the Strategic Document.

Subsequent to Government Decision 30/01, dated 20 May 2015, to incorporate the NSPR into its Annual Plan of strategic documents, the MoJ, with assistance from USAID’s Property Rights Program (PRP), developed an initial *Issues Document* that presented clusters of land tenure and property rights issues under five focus areas. The document was presented at the initial Sectorial Working Group (SWG) meeting in June 2015. Over 100 representatives from line ministries and government agencies, civil society, and donors and international partners working in the property rights sector met over a two day period and arrived at consensus on the five focus areas and technical rights issues to be analyzed and addressed under the NSPR. Five Concept Notes were then developed, providing in-depth analysis of issues identified in the *Issues Document*. The five Concept Notes provide a situation assessment, problem definition, international best practice, and recommendations. The foundations of this strategic document are guided by the five Concept Notes (see Annexes).

The CTG, responsible for drafting this document, included the main governmental representatives of the property rights sector. In addition to the Ministry of Justice, the group was composed of representatives of the Ministry of Environment and Spatial Planning, the Ministry of Local Government Administration, the Ministry of Agriculture, Forestry and Rural Development, the Ministry of Finance, the Property Tax Department, the Ministry of European Integration, the Kosovo Cadastral Agency, the Kosovo Property Agency, the Privatization Agency of Kosovo, the OPM Office for Strategic Planning, the OPM Agency for Gender Equality, and the Kosovo Judicial Council.

In order to conduct further in-depth analysis of the challenges identified, additional Thematic Working Groups established the problems identified and proposed solutions encompassed in this document. TWGs, which mirror the five objectives that the NSPR seeks to achieve, provided input that proposes to: (1) Develop a Clear Legal Framework on Immovable Property Rights; (2) Strengthen the Role of Courts and Other Service Providers to Recognize, Determine and Enforce Property Rights; (3) Guarantee and Enforce the Property Rights of Non-Majority Communities; (4) Guarantee and Enforce the Property Rights of Women; and (5) Promote a Vibrant Land Market to Fuel Economic Growth. (See Annex of all TWG members who participated in the process).

During a one year-long process of preparing this Strategy, over twenty working group consultation sessions have been held. 148 registered participants provided input, representing the central government, local government, assembly, the judiciary, independent state agencies, civil society organizations, and the donor community.
The USAID Property Rights Program provided continued support in the process of developing the Strategy. Other donors who were involved in this process also include the “Support to the Civil Code and Property Rights Project,” financed by the EU Office. (See Annex of all donors that participated in the process).

The Strategy has been developed based on the findings, recommendations and analyses conducted through extensive consultations. In addition to the NSPR, the Action Plan sets priorities, timelines and budgetary needs for the implementation of the recommendations. Estimated costs and implementation timelines, which may vary, have also been defined for all actions.

The portfolio of actions expected to be implemented is diverse, falling within the authority of various line ministries and agencies. Ensuring that actions are implemented requires the attention of the highest level of government.
5.0 BACKGROUND

The National Strategy on Property Rights (NSPR) is guided by Kosovo’s longer term aspirational objectives: strengthening the rule of law, promoting economic development, and supporting Kosovo’s integration in the European Union. Following a wide consultation process in June 2015 through the Sectorial Working Group, five clusters of property related issues were identified to be addressed. Following consensus reached, below is an analysis of the issues identified.

Section 1 focuses on the gaps behind the legal framework defining rights to property. The purpose of this section is to identify different types of property and ownership that require clarity. Section 2 focuses on the challenges that prevent timely and efficient transfer of rights to property, thereby ensuring that transfer of property are formally conducted and secured. Sections 3 and 4 identify and analyze property related issues specific to marginalized members of the Kosovo society, focusing on challenges that non-majority community members and women face to determine and utilize their rights to property. Section 5 discusses the limits spatial planning can place on secured rights to ensure they are used to protect land assets and promote productive use of land to support economic growth.

5.1 SECURING RIGHTS TO PROPERTY BY STRENGTHENING THE LEGAL FRAMEWORK

Legislation defining property rights must be sufficiently accessible, precise and foreseeable in its application in order to avoid any risk of arbitrariness. Private property rights in Kosovo are reasonably well defined. However, types of non-private property rights—state property, socially owned property, including urban construction land and status of 99-year leases, public property, and municipal property—are inconsistently used in legislation. Lack of clarity leaves room for legal uncertainty and ambiguity, contributing to confusion who has what entitlements and obligations under each type of property. Under the current legal framework, there is also uncertainty if and to what extent foreigners may own immovable property in Kosovo. The relevant provisions in the Constitution are ambiguous and allow for different interpretations, leading to an inconsistent application of the law in practice. The purpose of this section is to analyze different types of property that require clarity with the purpose to achieve a comprehensive and consistent legal framework that guarantees legal certainty and clarity.

5.1.1. SOCIALLY OWNED PROPERTY

The concept of socially owned property in the former Yugoslavia, including Kosovo, was based on the basic principle that property belongs to society as a whole and not to private persons or the state. It is a form of collective, though not state owned property, where society is the supreme titleholder. It was introduced at the conclusion of World War II, when the Yugoslav state embarked on a campaign to nationalize land and other real assets. The property nationalized became state property. This state property was then transformed into socially owned property, primarily in the form of agricultural cooperatives and other forms of socially owned enterprises for economic production. The custodian of socially owned property was typically the municipality. Citizens and other legal entities were granted use rights, including the permanent right of use over socially owned property but could not transfer or encumber it.

United Nations Interim Administration Mission in Kosovo (UNMIK) legislation enacted after the conflict recognized the existence of socially owned property, but did not provide further clarity on citizens’ rights

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14 Case law of the European Court of Human Rights; Novik v. Ukraine, No. 48068/06.

15 Private property rights are defined in the Law on Property and other Real Rights, as well as addressed in a number of related laws, such as the Law on Obligational Relationships, the Law on Inheritance, the Law on Non-Contentious Procedure, the Law on Contentious Procedure and the Law on Establishing the Immovable Property Rights Register. The Law on Property and other Real Rights defines ownership as the most comprehensive property right on an asset authorizing the owner to freely use the asset, dispose of it and exclude others from any interference with it (Law. No. 03/L-154, Article 18).
to the property after the Yugoslav institutions ceased to exist in Kosovo. Following Kosovo’s declaration of independence in 2008, the new Constitution of the Republic of Kosovo changed the legal nature of socially owned property. It transformed socially owned property into state owned property (owned by the Republic of Kosovo), confirmed by the Constitutional Court of Kosovo.16 Thus, with the ratification of the Constitution, socially owned property formally ceased to exist as a type of property right in Kosovo.

The Constitution was subsequently amended in 2012. The provision transforming socially owned property into state property was deleted. This created ambiguity and controversy over whether socially owned property was reinstated as a property rights type or if the previous transformation of socially owned property into state property was still in effect. The issue has not been conclusively resolved and is still debated by Kosovo’s legal community.

The legal status of property formally designated as socially owned affects efforts to legalize unpermitted constructions built on “urban land for construction,” formalize property rights and transformation of rights over arable land through 99-year leases.

5.1.2. URBAN LAND FOR CONSTRUCTION

Under the practice of socially owned property, land within urban zones designated for the construction of socially owned flats and buildings was categorized as “urban land for construction.” Citizens could obtain ownership rights in the residential building but were only granted rights to permanently use the “socially owned” urban land upon which the building was constructed. It is on “urban land for construction” that a significant portion of Kosovo’s housing stock is located and where a significant portion of unpermitted construction is found today.

Although it is presumed this category of socially owned land has been transformed into state property, legislation from the former regime governing access to and use of this land is still in effect. As such, the de jure rights conveyed to citizens is a permanent right to use the land granted by the municipality. The permanent right to use the land exists only as long as the residential property exists. If the building is destroyed, the owner of the building has the right to request permission to reconstruct the building. If this right is not exercised, the land reverts to the municipality.

The implications of this right are that the building and the land underneath it are not legally joined into a single property unit and cannot be registered in the cadastre and transacted in the land market as such, limiting the property’s marketability and reducing its value. This arrangement increases transaction costs because in order to comply with the law, the municipality must be involved as a third party. Moreover, citizens are frequently unaware that they are transacting only property rights in the building and not property right of the land. The overall reduction in the value of the property is also reflected in its value as collateral for seeking financing.

A more immediate concern is the impact that the designation “urban land for construction” has on the legalization of unpermitted constructions. Current legislation prohibits legalization of unpermitted constructions on state or public land. While the original intent may have been to deter construction on land over which the builder has no rights, most “unpermitted construction” projects are valid. Given the de facto situation on the ground today, definition of ownership of urban land for construction is necessary.

5.1.3. STATUS OF 99-YEAR LEASES

The land possessed by the former Socially Owned Enterprises (SOE) is typically the most valuable asset of the SOE. Often during privatization of SOEs created for agricultural production, the Privatization Agency of Kosovo (PAK) separated the land from the enterprises and privatized it through a 99-year lease as provided by the UNMIK regulation still in effect. UNMIK chose this form of private tenure as the instrument for transformation because it lacked the legal authority to permanently alienate land due to Kosovo’s unresolved political status.

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Although a 99-year lease is perceived as providing sufficient security of tenure to stimulate agricultural investments in Western Europe and the U.S., it is not a familiar concept in the Balkan region. There are concerns that it is perceived as a type of interim lease by investors from the region and serves as a disincentive to investment.

As discussed further below, it is recommended that legislation be enacted that would, through the operation of law, transform de facto rights in urban land for construction and rights conveyed through 99-year leases into private property rights to full ownership.

5.1.4. STATE AND PUBLIC PROPERTY

Kosovo’s legal framework does not clearly define the rights and obligations that exist in the categories of “state” and “public” property. Additionally, issues such as the mechanisms responsible to administer these types of property, whether such properties can be transferred to third parties and, if so, the procedures for the transfer are not specified. Moreover, the terminology used to describe these types of property is inconsistent throughout the framework. In some laws the terms are used interchangeably and in others they may be interpreted as separate and distinct.

Although the inconsistency is pervasive, an example from the Constitution will serve to illustrate this point. Article 121 of the Constitution refers to public property as incorporating natural resources of the Republic of Kosovo which include water, air space, mineral resources and other natural resources including land, flora and fauna, other parts of nature, immovable property and other goods of special cultural, historic, economic and ecologic importance. This confuses concepts of “state” and “public.” The distinction can be thought of as “state,” which includes assets operated by a specific state institution or branch of government, used exclusively by that branch, such as a research laboratory. While “public” is defined as assets and resources that are available to the entire public for use, such as a public park, definitions vary by country, as there is no standard definition and the Constitution provides little guidance to distinguish the two. Additionally, natural resources can also be privately owned. Evidence shows that the legislator had never intended for the Republic of Kosovo to own all of the country’s natural resources.

Another issue related to state property is the status of property owned by the Socialist Federal Republic of Yugoslavia (SFRY) and Serbia. Precedent in international law supports the argument that Kosovo is the successor state to SFRY and Serbia and is entitled to rights in immovable property located in Kosovo that was vested in these states. Kosovo has not passed a law that declares itself the successor state entitled to take ownership over the immovable property register in the name of these states which is in Kosovo, creating legal uncertainty over the status of these properties. The definition of status of property registered in the name of former Social-Political Organizations of Kosovo has also not been defined.

5.1.5. MUNICIPAL PROPERTY RIGHTS

The Law on Local Self Government confirms and strengthens previous UNMIK legislation that municipalities have the rights to own and manage immovable property. In practice, these properties would need to be registered in the name of the municipality in the cadastre. Due to outdated cadastral documents, a complete inventory and registration of municipal immovable property has not been completed—creating confusion.

The Law on Allocation for Use and Exchange of Immovable Property of the Municipality also provides a municipality with the right to request PAK to revert to it rights in socially owned property. As such, PAK would not have the authority to transfer socially owned property to the municipality. If presumption that socially owned properties have been transformed into state property is not correct, it would appear that transfer of the SOE assets to the municipality without compensating those with rights to the assets of the SOE could amount to an expropriation without payment of compensation.

5.1.6. RIGHT OF FOREIGNERS TO OWN PROPERTY

Article 121.2 of the Constitution states that foreign natural persons and foreign organizations may acquire ownership rights over immovable property in accordance with conditions established by law or
international agreement. One line of interpretation argues that, according to this provision, foreign persons may only acquire immovable property in Kosovo if either a law or international agreement permits it. In the absence of a law or international agreement, foreigners would not be permitted to acquire ownership of immovable property.

However, it can be argued that this provision is instead affirming foreigners’ rights to property as long as the conditions of ownership align with the Constitution and constitutional authority. Article 119.2 supports this argument by stating that foreign investors and enterprises must have the same legal rights as domestic investors and enterprises to own immovable property.

This argument is further supported by provisions in the Law on Foreign Investment. The law requires that foreign nationals and companies be treated equally. It would appear that this requirement would extend to the right to acquire property.

In practice, however, foreign citizens and legal persons have encountered resistance from Municipal Cadastral Offices (MCOs) when attempting to register property rights in the cadastre. Obstructing foreigners’ property rights exemplifies the obstacles created when cadastral legislation has not defined registration rights, who can register these rights, and the documents and other requirements for registration. In the absence of clear instructions, MCO clerks interpret legislation differently and inconsistently. Legal interpretation may not be the focus of the training they receive to perform their duties. This makes registration an unpredictable process, frustrating citizens and providing disincentives to formalize their property rights.

It is also noted that such practices violate the terms of the signed Stabilization and Association Agreement between Kosovo and the European Union. Article 65.3 of this Agreement requires Kosovo to grant national treatment to EU nationals acquiring real estate on its territory within five years from the entry into force of this Agreement. Article 51.4 of the Agreement similarly states that subsidiaries and branches of EU companies will have, from the entry into force of this Agreement, the right to use and rent real property in Kosovo. It also states that subsidiaries and branches of EU companies will, within five years from the entry into force of this Agreement, have the same right to acquire ownership rights over real property as Kosovar companies and, with regard to public goods/goods of common interest, the same rights enjoyed by Kosovar companies. These rights are crucial to economic development and activity.

5.2 SECURING RIGHTS TO PROPERTY BY ADDRESSING INFORMALITY IN THE IMMOVABLE PROPERTY SECTOR

Informality occurs when formal rights in property (rights registered in the cadastre) are not transferred from the formal rights holder through operation of law. Rights informally transferred are exercised de facto by the informal rights holder and generally respected by the community at large but cannot be registered in the cadastre. As a result, rights remain registered in the cadastre in the name of the formal rights holder who already transferred the rights, rather than the person currently exercising rights over the property.

Stakeholder consultations conducted during the development of the NSPR identified four scenarios giving rise to informality in Kosovo today:

1. Cadastral records that were not updated after the death of the rights holder because families failed to initiate inheritance proceedings;
2. Cultural norms and practices that regarded verbal contracts for the sale of land as sufficient legal security;
3. Discriminatory legislation that prohibited the sale of immovable property between Kosovo’s Albanian and Serbian ethnic communities resulted in informal sales contracts that could not be registered in the cadastre; and
4. The removal of cadastral documents to Serbia resulted in lack of updated cadastral data, creating a layer of confusion over which set of documents currently provide evidence of property rights in Kosovo.
To obtain legal recognition of his or her rights, an informal rights holder will need to establish a “chain of title” to demonstrate that he or she acquired rights from a formal rights holder. In cases where inheritance proceedings have not been initiated, this will require the informal rights holder to demonstrate that he or she is the lawful heir of the deceased formal rights holder and that his or her claim to the deceased’s immovable property is not contested by other heirs. In cases of verbal and informal contracts, the informal rights holder is required to initiate contested court proceedings to produce evidence that he or she in fact purchased the property from the formal rights holder. Informality persists because inheritance and court proceedings are expensive, time consuming, and burdensome. Cadastral procedures that are not affordable, efficient, transparent and predictable also discourage registration of rights that are legally recognized.

5.2.1. **DELAYED INHERITANCE: CADASTRAL RECORDS WERE NOT UPDATED AFTER THE DEATH OF THE RIGHTS HOLDER BECAUSE FAMILIES DID NOT INITIATE INHERITANCE PROCEEDINGS**

Delayed inheritance claims are those initiated by family members (potential heirs) of a deceased property rights holder many years after the rights holder’s death (frequently 20 years or more). Kosovo Cadastral Agency (KCA) systematic registration and cadastral reconstruction data indicates that approximately 30% of all applicants attempting to formalize and register rights in immovable property are prevented from doing so because they have not initiated inheritance procedures and rights in the property they possess are currently registered in the name of a deceased ancestor. Additionally, anecdotal information indicates that up to 50% or more of applicants seeking to formalize rights over the more than 350,000 unpermitted buildings through the Government of Kosovo’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 deceased rights holder.17

Potential heirs often have constructed homes and buildings on the deceased rights holder’s land parcel and exercise de facto rights over the property. To formalize these rights, the potential heirs are required to initiate inheritance proceedings. Under current procedures, the potential heirs are required to contact and secure participation of all potential heirs in the proceedings. Because the proceedings are initiated long after the death of the formal rights holder, it is common for the number of potential heirs to have grown to 30 or more. It is also common for many of these potential heirs to have moved from Kosovo to begin new lives. The burden on the potential heirs seeking to formalize their rights to contact and secure the participation of all potential heirs is considerable and is compounded by the unwillingness of some of the potential heirs living abroad to participate in the proceeding. Nevertheless, all parties with an interest in the property must be notified and provided an opportunity to participate. In all inheritance proceedings, it is essential that female family members in particular are provided with information and knowledge required to participate in the proceedings and assert their rights to property as a means to counter cultural norms and societal pressures on female heirs to renounce their rights in favor of male members of their family. Until more streamlined, efficient and affordable administrative procedures are adopted to process delayed inheritance claims and provide sufficient due process safeguards to protect the property rights of all potential heirs, the legal status of these properties will likely remain undetermined indefinitely. Without clear legal status, full rights in the property cannot be exercised and the properties will be excluded from the land market.

5.2.2. **VERBAL OR INFORMAL CONTRACTS: INFORMALITY IS PREVELANT IN CASES WHEN TRANSACTIONS HAVE BEEN CONDUCTED IN THE ABSENCE OF A CONTRACT OR WHEN CONTRACTS WERE NOT RECORDED IN THE CADASTRE**

In the past, the execution of verbal contracts for the sale of land and immovable property was an accepted means for transacting property rights due to cultural and traditional norms practiced in rural areas of Kosovo. A significant percentage of these verbal contracts were executed between ethnic Serb sellers and ethnic Albanian buyers. Subsequent to 1991, even if a contract document for inter-ethnic sales of property existed, the transaction could not be recorded in the cadastre due to discriminatory legislation in effect at the time prohibiting such transactions.

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As a result, cadastral records do not provide evidence of many inter-ethnic transactions and continue to reflect the seller as the owner of the property. The lack of sufficient documentation of the sale compels the current informal owner to exercise *de facto* rights over the property. Resolving such informality typically requires the Albanian buyer to initiate a contested claim in the courts to obtain a decision determining that a contract did exist and the rights in the property were freely transacted. Typically the seller has either left or was displaced by the conflict and cannot be located. Inability to secure testimony from the seller creates an evidentiary gap that both the informal seller and the courts have attempted to fill by relying on the legal doctrines of **substantial performance** and **positive prescription** to demonstrate the transaction occurred. Both doctrines are problematic.

- It is questionable whether **substantial performance**, as stated in Article 73 of the Law on Obligations,\(^\text{18}\) applies to transactions of immovable property and can be used as grounds for determining existence of a contract.\(^\text{19}\) While some courts have held that parties have satisfied the elements of substantial performance through sales price payment and possession of the immovable property, there are conflicting opinions that rights acquired through "legal affairs,"\(^\text{20}\) also require registration of the contract in the cadastre before the contract can be given legal effect.

- Rights in immovable property can be acquired through **positive prescription**\(^\text{21}\) by demonstrating: "(1) legal holdership, (2) conscientiousness, (3) the passing of the statutory period of time, and (4) possession of the property right by another." The proprietary possessor must demonstrate twenty (20) years of uninterrupted possession or ten (10) years of uninterrupted possession if the possessor’s rights are registered in the cadastre and no objection to the registration has been raised during this period to meet the requirements of the statutory period and acquire formal rights in the property.\(^\text{22}\) The application of this doctrine by courts and lawyers has been inconsistent, resulting in judgments favoring claimants even when some criteria were unmet, depriving the true property owners of their rights.

Both doctrines require the presence of the seller in the proceedings to ensure both parties are provided due process. In the event the seller cannot be located, the court is obligated to appoint a **temporary representative** to act in the interest of the seller. Appointment of a temporary representative, however, is a measure of last resort to be used after all means of notifying a party have been exhausted.\(^\text{23}\) The use of temporary representatives also raise human rights concerns because in a post-conflict environment, there is the possibility that property was not voluntarily sold, rather it was usurped as a result of displacement. This may not be true for the majority of such cases but its possibility serves to cast a "cloud" over the rights to properties transacted informally, contributing to uncertainty in the land market.

### 5.2.3. REMOVAL OF CADAstral DOCUMENTS TO SERBIA CREATED A LAYER OF CONFUSION OVER WHICH SET OF DOCUMENTS PROVIDES EVIDENCE OF PROPERTY RIGHTS IN KOSOVO

The recently passed Law on the KPCVA mandates the KPCVA to carry out two separate but interrelated functions: to finally resolve conflict related claims previously lodged with the Kosovo Property Agency (KPA) mainly by displaced persons (DPs) currently unable to exercise rights over their properties; and to compare the cadastral records returned from Serbia against the cadastral records in Kosovo to identify and resolve any discrepancies between the two sets of cadastral documents. The “Explanatory Memorandum” produced for the draft version of the law discussed the need to resolve both the claims filed by DPs and discrepancies in the cadastral records in order to produce a complete and accurate cadastre to help

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\(^{21}\) Ibid., Article 28.


strengthen the country’s legal system and promote the rule of law. Decisions resolving discrepancies in the records have the legal effect of determining rights to property. The KPCVA’s decision making powers create opportunities for implementing administrative procedures to systematically resolve a significant portion of informality in Kosovo that weakens security of tenure for members of both majority and non-majority communities and creates a climate of uncertainty that discourages investment.

**Preliminary Identification of Administrative Barriers and Practice that Create Disincentives for Citizens to Register Their Rights**

If cadastral procedures are not affordable, efficient, transparent and predictable, they will discourage registration of rights that are legally recognized and help perpetuate informality in Kosovo. Below are the most common administrative barriers, identified by stakeholders during development of the NSPR, to simple, efficient and affordable registration of property rights.

**The Law on Obligatory Relationships** does not stipulate the contract’s form. The absence of standard contract forms requires registration clerks to interpret contract language to identify information required for registration, slowing and complicating the registration process.

Legislation governing registration of property rights does not list all legal documents creating rights in immovable property. The legislation does not include decisions of the Housing and Property Claims Commission (HPCC), the Kosovo Property Claims Commission (KPCC) recognizing the property rights of displaced persons (DPs); and notary acts documenting property transactions as providing the legal basis for registering rights in the Immovable Property Rights Register (IPRR). Because these decisions are not specifically listed in the legislation as legal documents that create rights leaves room for competing interpretations among registration clerks in some MCOs, thereby refusing to register rights based on these documents.

**Outdated Cadastral Data Does Not Correspond to the Current Reality on the Ground.** Court decisions and notary acts creating rights in immovable property must contain information describing the property that is “identical with the data registered into the Cadastre (unit number, area, etc.)” Widespread informality, removal of cadastral documents to Serbia, and creation of a new cadastral system that introduced a new parcel numbering system make it difficult to include property descriptions in these acts that perfectly match outdated cadastral documents and create significant challenges to establishing a clear “clear chain of title” to demonstrate rights in a parcel of land.

Although MCOs have the authority to correct technical errors such as misspelled topographical names on maps or incorrect personal identification numbers, the legislation does not provide clear guidance to MCOs to differentiate between “technical” and “material” errors.

**Inconsistent MCO Practices.** Ambiguity in the cadastral legislation has led to inconsistent MCO practices regarding the requirement to complete a cadastral survey to update the cadastral records when rights have

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26 The HPCC adjudicated claims filed by DPs under the Housing and Property Directorate (HPD). The Kosovo Property Agency (KPA) succeeded the HPD. The KPCC was the adjudicatory body for the KPA.
27 Administrative Instruction on Implementing the Law on Cadastre. Ministry of Environment and Spatial Planning, AI 02/2013, 11 February 2013, Article 8 (2).
29 AI 02/2013 on implementing the Law on Cadastre governs data correction but also does not distinguish between technical and material errors. Administrative Instruction on Implementing the Law on Cadastre. Ministry of Environment and Spatial Planning, AI 02/2013, 11 February 2013, Article 19.
been transacted. The Law “On Cadastre”\(^{30}\) states that a cadastral survey is required “to enter a new cadastral unit in the cadastre or to change the data about an existing cadastral unit” but this requirement is not mentioned in the implementing Administrative Instruction.\(^{31}\) Anecdotal information informs that some MCOs 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, however, is followed on an *ad hoc* basis and is not codified in the legislation.

Costs and fees levied for registering rights are irregular among municipalities. The applicable AI sets the fees for registering rights. Fees are based on the legal rights to be registered. These include transaction, gift, administrative or judicial decision, division of joint property, and inheritance, or “change.” In practice, however, municipalities have instituted the additional requirement that any back taxes owed on the property must be paid before the MCO will issue the certificates of ownership. Municipalities should consider whether this is an effective mechanism for increasing the collection of property taxes for own-source revenue. For example, one reason back taxes have accrued in delayed inheritance cases is because the rights holder in whom the property is registered is deceased and 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 could discourage potential heirs from formalizing their rights. It would 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. The additional mandatory municipal transaction tax per cadastral unit, introduced by some municipalities to register immovable property when transacted, is another disincentive for citizens to formalize their rights.

Some MCOs have refused to register sales transactions without a certificate issued by the municipality (for which a fee is charged) confirming that the municipality will not exercise its rights of pre-emption over the property. This was a requirement under the former regime that has not been explicitly repealed by more recent legislation.\(^{32}\)

An additional barrier to formalize rights created through informal sales transactions is the legal requirement that payments for property sales in excess of €10,000 were made through banks. This is factually impossible for transactions that occurred prior to this requirement coming into effect in 2005.

**Transparency of Cadastral Data.** Democratic societies and market economies require openness and information in order to operate effectively and efficiently and to develop and grow. This is particularly true as concerns land and rights in land. For this reason it is very important that the records of the Cadastre and Immovable Property Rights Registry be fully open and easily accessible to the public. This will increase transparency in governance; make important legal and economic information available to society; encourage foreign and local investment; and support the development of dynamic land markets.

Concerns about possible conflicts with the Law on Personal Data Protection have been cited as justification for withholding certain information from the public. Revisions must be made to the Law on Data Protection and other relevant laws to remove all ambiguity surrounding this issue and provide a clear legal basis for the right of the public to have full access to the Cadastre and Immovable Property Rights Register.

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\(^{32}\) This was a condition imposed by the Law on Transfer of Immovable Property, No. 45/81, 29/86 and 28/88, S.L. SAPK, which was not repealed by Kosovo’s new Law on Property and Other Real Rights (Law no. 03/L-154).
5.3 GUARANTEEING AND ENFORCING THE PROPERTY RIGHTS OF DISPLACED PERSONS AND NON-MAJORITY COMMUNITIES

Universally recognized by the European Convention on Human Rights and its Protocols, international law and Kosovo’s Constitution, citizens displaced by conflict have a right to return to their homes and immovable properties. Following the adoption of the “Principles on Housing and Property Restitution for Refugees and Displaced Persons,” also known as the “Pinheiro Principles,” the concept of return, as understood by the international community, has become “not simply the return to one’s country for refugees or one’s city or region for DPs, but the return to and re-assertion of control over one’s original home, land or property; the process of housing and property restitution.”

Completing the property restitution process (which began in 2000) has been a long and difficult process due to the scale of displacement resulting from the conflict and number of claims filed by DPs. As of July 2015, the UNHCR calculated the number of DPs in Kosovo at 17,086, which includes 9,265 Kosovo Serbs and 7,078 Kosovo Albanians. The remainder are Roma and smaller numbers of Ashkali and Egyptians (Albanian-speaking minorities). A 2011 assessment estimates that there are still approximately 97,000 people displaced as a result of the 1998-99 war living in Serbia who ‘still have needs related to their displacement’, the majority of which are ethnic Serbs. A total of 42,749 claims were filed with the KPA, mostly by DPs and members of Kosovo’s non-majority communities. Of these, 29,450 are pending implementation, including decisions to place property under KPA administration and claims closed for non-cooperation based on the right of claimant to request re-possess or re-open the claim.

In the aftermath of Kosovo’s ethnic conflict, final resolution of successful claims adjudicated by the KPA is the priority intervention to strengthen and guarantee rights of the country’s non-majority communities. The GoK’s commitment to providing all DPs with a final, fair and effective remedy that will enable them to re-assert control over their immovable properties is highlighted in the preamble and Article 4 of the Stabilization and Association Agreement Kosovo executed with the EU.

5.3.1. FINAL RESOLUTION OF CLAIMS LODGED AT THE KPA

It is important to note that the majority of claims have been filed by DPs. The KPA claims resolution process comprises two phases. First, the claim must be adjudicated and if the claim is successful, the rights of the successful claimant will be recognized and be provided legal effect through the KPA decision. Second, the KPA decision must be fully implemented by providing the successful claimant the opportunity to avail him or herself of the remedies provided by law.

The first phase has been completed. Of the 42,749 claims filed with the KPA, 41,852 have been adjudicated by the Kosovo Property Claims Commission (KPCC) as of December 2015. Of the additional 897 claims, the KPCC’s Executive Secretariat rejected 264 claims as ungrounded and 633 claims were withdrawn by claimants. Adjudication of all filed claims is a significant achievement demonstrating the GoK’s commitment to recognize and respect the property rights of DPs.

Once the claim is adjudicated, the KPA decision must be registered in Kosovo’s cadastre, if property is not registered in the name of the successful claimant, to provide notice to all of Kosovo’s institutions and citizens of the DP’s rights in the immovable property. Additionally, the KPA decision provides the legal basis for the successful claimant to request an eviction to regain possession of his or her immovable property. Registration of the KPA decision will enable Kosovo Police or private bailiffs to confirm the


decision’s legitimacy prior to executing evictions. Registration of the KPA decision also serves to strengthen due process protections for DPs and mitigates the human rights concerns related to the use of temporary representatives. For example, in proceedings to formalize rights created through informal, inter-ethnic sales contracts, as well as administrative proceedings to expropriate, privatize or formalize unpermitted constructions on immovable property of DPs, adjudicators could research cadastral documents to learn that a DP possesses rights in the property, even if his or her whereabouts are unknown.

Current legislation does not specifically mandate registration of KPA decisions in Kosovo’s cadastre. Article 20 of the recent KPCVA law requires registration only of decisions issued by the Property Verification and Adjudication Commission (PVAC) established to resolve discrepancies between the cadastral documents returned from Serbia and those in Kosovo. It does not address registration of decisions issued by the KPCC (or its predecessor the HPCC) or the Property Claims Commission (PCC) created by the KPCVA law. Moreover, KPCC and HPCC decisions are not specifically mentioned in the cadastral legislation as final legal acts that shall be registered.

The second phase will be implemented by the KPCVA’s Executive Secretariat. According to the KPA, there are currently 29,450 decisions pending implementation. This includes 7,660 decisions that have not yet been delivered to the successful claimant and 9,041 decisions for which the successful claimant was contacted but did not request a remedy. There are 13,009 successful claimants’ properties under the KPA’s administration and included in its rental scheme.

Remedies to be provided by the Executive Secretariat are listed in Article 18 of the KPCVA law and include evicting the current occupant to restitute and return the claimed property to the possession of the successful claimant, placing the claimant’s property under KPCVA administration, including the property in a rental scheme, and requesting administrative closure of the claim. Additional remedies available to successful claimant include requests to seize the claimed property, to demolish unlawful constructions, and sell the property at auction.

Article 21.7 of the new KPCVA law states, however, that within 18 months of the law entering into force, the KPCVA shall conclude its mandate to administer and rent properties. The legislative intent for this deadline is to finally conclude the KPA’s mandate to serve as a temporary agency to restitute properties of DPs in the aftermath of the conflict. The intent is not to unilaterally impose on DPs an 18-month deadline within which they must exercise their rights to a remedy.

The GoK is cognizant of its human rights obligations under international law and its SAA with the EU. Pinheiro Principle 2 provides that “all refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land/or property that is factually impossible to restore as determined by an independent, impartial tribunal.” The European Court of Human Rights (ECtHR) has found that states have a duty to provide displaced persons secure access to their property:

> The Court considers that as long as access to the property is not possible, the State has a duty to take alternative measures in order to secure property rights. The Court refers in that respect to the case of Doğan and Others37 concerning internal displacement of villagers, in which it examined in detail the measures taken by the Turkish Government with a view to either facilitating return to villages or to providing DPs with alternative housing or other forms of assistance (cited above, §§ 153-156). The Court would underline that the obligation to take alternative measures does not depend on whether or not the State can be held responsible for the displacement itself. In Doğan and Others the Court noted that it was unable to determine the exact cause of the displacement of the applicants and therefore had to confine its consideration to the examination of their complaints concerning the denial of access to their possessions. Which measures need to be taken depends on the circumstances of the case. 38

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37 ECtHR, Applications nos. 8803/02, 8804/02, 8805/02, Judgment of 29 June 2004.

38 ECtHR, Application no. 40167/06, para. 234.
Thus, the ECtHR gives great importance to the right to property and the State’s duty to provide access and security with respect to the property of DPs, irrespective of whether the State was responsible for creating the circumstances that led to displacement. The GoK is committed to fulfilling its duties and human rights obligations after conclusion of the KPCVA mandate to provide DPs with final, fair and effective remedies that will enable them to re-assert control over their immovable properties. Administration of property was only intended as an interim measure until the claimant chose a final remedy. Final remedies include providing successful claimants with an eviction so they may take possession of their property at any time in the future, placing their property in a rental or leasing scheme, and offering the property for sale through an auction. The GoK will explore options to transition implementation of these remedies from the KPCVA to the Kosovo Police, private bailiffs and private real estate rental and leasing firms. The strategic priority for the GoK now is to begin to develop a plan of action to guide this transition.

Several implementation challenges will need to be addressed during the course of developing the transition plan. The first is to address the on-going issue of illegal re-occupation of properties after a KPA eviction. According to the OSCE report, between 2008 and 2013 KPA referred a total of 326 cases of illegal re-occupation of properties to the prosecution for initiation of criminal procedure. The report assessed that cases take on average two years and three months to process from the time the cases were submitted by the KPA to the prosecutors’ offices to a final judgement being rendered by a Court.9 Additionally, some prosecution offices did not process the claims with sufficient urgency, which delayed action and did not pursue penalties that would serve as a sufficient deterrent for preventing future illegal re-occupations.

Second is establishing efficient communication protocols between the KPCVA and successful claimants to provide information they require to select an appropriate remedy. If the KPCVA is required to directly contact each successful claimant, it may take more than the 18 months during which it is to conclude its mandate to administer properties and operate the rental scheme. The KPCVA does not have the mandate to work in Serbia, Montenegro and the Former Yugoslav Republic of Macedonia (FYROM) where the overwhelming majority of its claimants are residing. Additionally, outreach has been implemented in the past through the United Nations High Commissioner for Refugees (UNHCR), and EU funded programs, but such approaches are ad hoc and dependent upon donor funding.

Third, the KPCVA law does not address the legal status of properties currently under KPA administration and included in its rental scheme after the KPCVA mandate ends. It also does not address the legal status of the persons to whom the KPA allocated rights of occupation. Families have occupied these properties for years and may have made significant investment in the maintenance and upkeep of the property. Legislation is needed to clarify whether these persons have acquired any rights in the claimed property.

Additionally, clarification is needed regarding the legal status of the 9,041 decisions which are in a form of implementation “limbo” because the claimant never requested a remedy after receiving KPA notice. The new law does not address whether the claim should be administratively closed or remain open indefinitely.

Lastly, it is essential that final HPCC, KPCC and PCC decisions are not re-litigated in the courts. Although these final decisions are legally binding and not subject to challenges or reviews, there have been instances where the courts have allowed cases challenging these final decisions to proceed. It is imperative that such cases are identified and dismissed.

5.3.2. ADDITIONAL ISSUES RELATED TO DISPLACEMENT, ACCESS TO JUSTICE AND HOUSING

The whereabouts of DPs are frequently unknown. This prevents delivery of notice required to provide them with information and knowledge of legal proceedings that impact their rights to property and deny them due process protections.

Fraudulent Transactions. In the chaotic environment immediately after the conflict, displacement created opportunities for a number of fraudulent property transactions through which immovable properties owned by DPs were sold without their knowledge. Policies must be developed to determine whether a party purchased in good faith and how to fairly and efficiently allocate liability. Issues for consideration include

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whether those who purchased property immediately after the conflict knowingly and willingly accepted the risk that the seller may not have rights in the property and should be held strictly liable if the sale is proven to be fraudulent. Policies will also need to be developed to determine the appropriate remedy in situations where the property was transacted several times and the current owners are good faith purchasers who paid value for the property years after the conflict.

**The process of legalizing unpermitted constructions.** Concerns have been raised that all citizens in Kosovo, especially those living in the diaspora and DPs, did not have sufficient information and time to comply with the requirements for legalization that were also criticized as having been overly complex. The human rights of any citizen whose property is demolished without sufficient notice and information to comply with the law will have been violated.

**The on-going privatization process implemented by the Privatization Agency of Kosovo (PAK).** The agency is required to publish formal notification to creditors in newspapers in the Albanian and Serbian languages in Kosovo, Serbia and Montenegro. Additionally, the procedure of mutual legal assistance followed by the Special Chamber of the Supreme Court of Kosovo on Privatization Agency-related matters facilitates the delivery of notice and court summons in privatization and liquidation processes. There are concerns under these procedures that sufficient notice has not been provided to meet human rights standards for due process.

Additionally, a number of Kosovo Serbs participated in restitution proceedings under the former regime. The law in effect at that time has not been declared discriminatory and presumably has legal effect in Kosovo. The land restituted under these proceedings was socially owned and the rights restituted frequently were not registered in Kosovo’s cadastre. There are cases where the restituted land was privatized by PAK or was deemed to have reverted to a municipality that then sold or leased it to third parties. The issue becomes whether the municipality knew or should have known that rights in the land had been transferred to the DP through the restitution law. Similar to the issue of fraud, legislative policy and guidance is needed to determine the appropriate remedy.

**Land Expropriation.** The notification provisions related to expropriation proceedings also require strengthening. Expropriation constitutes seizing private property. Seizing in the absence of due process of notification is a human rights violation. It is essential that notification procedures are strengthened to provide sufficient notice to DPs, as well as Kosovars in the diaspora and vulnerable communities in Kosovo.

**Third Party Constructions.** The KPA identified 35 cases where a structure was constructed unlawfully on the land of a successful claimant. KPA attempted to mediate amicable solutions between the parties; however, only 10 cases proved successful through mediation. Consequently, the legal remedy is the demolition of the unlawfully-built structure. The government has not yet provided the KPA with the funding it requested to carry out the demolitions, preventing it from implementing the legal remedy. The Constitutional Court of the Republic of Kosovo in its ruling on the so-called ‘Jovanovic case’ found that the non-execution of the KPCC decision by the KPA, due to lack of funding, was ‘in contradiction with the principle of the Rule of Law and constituted a violation of the fundamental human rights guaranteed by the Constitution’. Another 33 lawsuits have been lodged against the KPA at the Constitutional Court.

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41 Data as per 31 October 2015.
42 Section 15 of the Law No. 03-L-079 (Law on Amending UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property) provides the KPA with a wide range of remedies for the execution of final KPCC decisions and appeals panel judgments including, but not limited to, ‘eviction, placing the property under administration, a lease agreement, seizure, demolition of unlawful structures and auction’.
44 Informally confirmed in an interview with Srdjan Staletović, 15 February 2016.
Implementation of HPD, “A” & “C” Category, Decisions. So called “A” category claims pertain to Kosovo Albanians who were terminated from employment due to discriminatory legislation enacted under the former regime. When their employment was terminated, they also lost their rights to socially owned apartments. Typically, the apartment was then allocated to a Kosovo Serb who was subsequently displaced, category “C”. Under the legislation governing the Housing and Property Directorate (HPD), claimant “A” could be restituted the apartment and claimant “C” would receive compensation for the rights lost in the apartment. The cost of restituting the so-called “A” claimants is estimated at approximately €3,000,000. Similar to the third party constructions, the KPA has not been able to secure funding from the GoK to pay compensation and the claims of both the Kosovo Albanian and the Kosovo Serb with rights in the property remain unresolved.

Accrued Property Taxes and Utility Bills during Displacement. The Law on Taxes on Immovable Property, Article 5 (3), anticipates that the taxpayer shall be the physical or legal person that actually uses the property if the owner or lawful user of immovable property cannot be determined, or can be determined but has no access to the immovable property. Nonetheless, selective interpretation of this paragraph in certain municipalities has resulted in DPs being held liable to pay property taxes that were left unpaid by an occupant of the property or a third party. Property taxes must also be paid from Kosovo proper. Moreover, issuance of personal documents is conditioned on payment of all taxes owed to the municipality. Under these circumstances, DPs are liable for tax debts they did not incur and are prevented from accessing personal documents required to exercise their human rights. Similarly, DPs incur liability for utilities (electricity and water) that they did not use. The relevant legislation, Law No. 03/L-204, does not explicitly exempt DPs from paying for utilities used in properties over which they do not exercise control and are responsible for the balance owed when they repossess their property. UNMIK Administrative Direction 2008/5 states that KPA claimants are exempt from paying accumulated municipal public services for the period during which they did not exercise control over their property. An amendment to this Administrative Direction has been prepared for implementation by the KPCVCA that will further strengthen protections for DPs.

Access to Justice. DPs are precluded from accessing free legal aid because they do not receive social assistance in Kosovo and possess rights in immovable property. Additionally, the Agency for Free Legal Aid (AFLA) lack resources to effectively provide legal services to meet the needs of DPs. Furthermore, the Law on the Use of Languages is a comprehensive legal document; however, in practice, “significant challenges remain in access to services in official languages both at the central and municipal level, including languages used by minority communities.” Finally, the cost of proceedings and travel could restrict DPs’ access to court. Under circumstances of displacement or socio-economic conditions, the requirement to pay court fees, along with the prospect of having to pay other related costs such as travel costs, is a de facto barrier to judicial review. According to Pinheiro Principle 13(2): “Everyone who has been arbitrarily or unlawfully deprived of property as a consequence of conflict should be able to submit a claim for restitution or compensation free of charge to an independent and impartial body.”

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The KPA provided

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45 Law on Taxes on Immovable Property. Official Gazette of the Republic of Kosovo. Law no. 03/L-204, 07 October 2010, Article 5 (3).

46 Such as Article 2 of Protocol No. 4 (freedom of movement) of the European Convention on Human Rights and Fundamental Freedoms (ECHR), Article 12 (the right to marry) of the ECHR, and Article 16 (the right to recognition as a person before the law) of the International Covenant on Civil and Political Rights.

47 The rules for water supply, as provided by the Law Amending UNMIK Regulation 2004/49 on the Activities of Water, Wastewater, and Solid Waste Service Providers (No. 3/L-086) approved by the Kosovo Assembly on 13 June 2008 in accordance with the Constitution of the Republic of Kosovo, follows the same general principles and raises the same issues as electricity utilities, and will not be discussed separately.

48 Article 33 (2) of the applicable Law No.03/L. –201 on Electricity states that “the terms and procedures for billing, bill collection, and payment shall be defined in the Regulation on the General Conditions of Energy Supply issued by the Energy Regulatory Office.” Law on Electricity. Official Gazette of the Republic of Kosovo, Law No. 03/L-201, 07 October 2010.

49 European Commission, Kosovo Progress Report, 2015, p. 25.

50 The same principle is implicitly contained in article 29.2 of the IDP Guiding Principles according to which competent authorities have the duty to assist returned and/or resettled displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon displacement.
first instance legal review free of cost. However, about 6% of KPA claims were dismissed on procedural or jurisdictional grounds, which are now susceptible of being filed through the ‘normal’ civil court system.51

Social Housing/Land Allocation. Provisions have been made to assist repatriated persons with temporary shelter and provisional housing through Law No. 03/L-164 on Housing Financing Specific Programs and Law No. 04/L-144 on Allocation for Use and Exchange of Immovable Property of the Municipality. However, municipalities have not made consistent and regular use of this legal framework to assist repatriated persons.52 As such, repatriated DPs are at risk of becoming permanently displaced persons. Another issue at the central level is the delay in adopting a three year Kosovo-wide strategy on Social Housing.53

Roma Camps/Settlements. About 100 informal settlements remain inhabited by different ethnic communities, the majority being Roma, Ashkali and Egyptian.54 People living in such camps experience residential segregation, poor housing conditions and poor access to basic services and urban infrastructure, including water, electricity, waste collection and adequate public transportation and roads.55 The major property-related issues they face are the lack of secure tenure, often due to a lack of property documentation, unregistered constructions and lack of assistance in reconstructing properties destroyed during and after the armed conflict of 1998-1999. The Strategy for Regularization of Informal Settlements 2011-2015 was never approved. Although most municipalities have approved spatial plans that include informal settlements as required by the Law on Spatial Planning, the implementation of these plans and their harmonization with the new requirements of Law no.04/L-174 on Spatial Planning is pending.56

5.4 GUARANTEEING AND ENFORCING THE PROPERTY RIGHTS OF WOMEN

Article 46 of Kosovo’s Constitution guarantees the rights of all citizens to own property but women struggle to overcome cultural barriers to inherit immovable property from their birth families and spouses and widespread informality that prevents them from registering their ownership rights in the cadastre. According to the 2011 census, women make up 49.6% of the Kosovo population, yet only 15.24% of women have property registered in their name. When women do not control property, they cannot be full economic actors. Moreover, women’s asset ownership has been demonstrated to have a positive benefit for the well-being of families.

Due to the fact that most property transfers through inheritance are not formalized, there are problems with regard to the processes of inheritance. As long as formal inheritance processes are not followed, it will be difficult to actualize any legal change that will promote asset ownership for women.

Research indicates that heirs are often omitted from the Act of Death, a declarative document that is issued by the Municipal Civil Registry Offices and is intended to list all the family members eligible to inherit immovable property. Courts, notaries and municipal cadastral offices have no independent means to verify if all members of the family eligible to inherit are included in the Act of Death. This creates ample opportunities for families to exclude women heirs.

Women’s renunciation of their rights to inherit family property rights is another major obstacle that prevents women from becoming property owners in Kosovo. Due to tradition, cultural pressure and family

51 See KPCD DEC 135, para 15: ‘Claims which are dismissed as falling outside the Commission’s jurisdiction or for procedural reasons and not on account of the merits of the claim may be capable of resolution through the local courts, subject to the applicable law. In such claims the Commission’s decision does not constitute a res judicata’.


56 Law on Spatial Planning. Official Gazette of the Republic of Kosovo. Law No. 04/L-174, 07 September 2013, Article 15 and 16.
expectations for women not to inherit the real estate from their birth families, women often decide to give up their property in favor of their brothers.

There are two paths to formalize inheritance: through a notary or through the courts. In both cases, there are insufficient safeguards to ensure that female heirs who have a legal right to the estate of the deceased are identified.

**Provision for surviving spouses in Kosovo is often insufficient** either because the shares of the estate are inadequate or because the marital home was not registered in the name of one of the spouses, but of a different family member, and therefore cannot be considered to be part of the marital property. The fact that property purchased during the marriage is rarely in the name of the female spouse contributes to this problem.

According to the Law on Inheritance, women who renounce their property rights also renounce the rights of their minor children. **There is no custodial oversight to ensure the well-being of minor children.** Not only is this practice outside of European standards regarding the rights of children, it is also a significant national welfare interest in a country where minors are a large percentage of the population.

### 5.5 USING SECURE RIGHTS TO PROPERTY TO FUEL ECONOMIC GROWTH

Promoting growth in the agriculture sector is a key component in the Government of Kosovo’s program for fueling Kosovo’s economic development. Excessive fragmentation of land parcels and unpermitted construction over the past 15 years has significantly reduced the amount of arable land available for investment in Kosovo’s agricultural sector, reducing agricultural productivity and potential for economic growth. Legislation and policies are required to treat the existing constructions and promote effective spatial planning to support land consolidation and prevent unpermitted construction in the future. They must also support the Privatization Agency of Kosovo (PAK) to increase the amount of arable land available to private sector investment by privatizing the remaining 17,000 hectares of arable agricultural land that was formerly socially owned and create incentives that will ensure investors use the land for agricultural production rather than speculation.

#### 5.5.1. TREATING UNPERMITTED CONSTRUCTION ON AGRICULTURAL LAND

A significant portion of Kosovo’s housing stock was destroyed during the conflict, creating an urgent need to construct shelter for its population. Construction began in the absence of spatial plans permitting. Unfortunately the practice persisted long after the conflict.

In February 2014, the GoK enacted the Law for Treatment of Constructions without Permit to regulate the process of legalizing unpermitted constructions. Although unpermitted constructions have contributed to extensive fragmentation of arable lands, the GoK took the policy decision to legalize, rather than attempt widespread demolition of unpermitted constructions which would devastate a significant portion of the country’s housing stock and deprive citizens of their investments and right to shelter. Subsequent to adoption of this legislation, the Ministry for Environment and Spatial Planning (MESP) recently established a Registry of Unpermitted Constructions in which 352,836 buildings have been identified and registered. The policy rational for treatment of unpermitted constructions has two objectives; the first is to formalize rights over buildings that do not jeopardize public health and safety to promote economic growth. Until rights in the building are formalized and registered in the cadastre, they cannot be transacted in the land market or used as collateral to secure finance for investment. Additionally, integration of these buildings into the cadastral system will make it easier for municipalities to levy and collect taxes to increase generation of own-source revenue (OSR). The second objective is to ensure unpermitted constructions are no longer the norm in Kosovo. To achieve this objective, spatial plans must be rigorously enforced.

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The law in its current form provides only the opportunity to formalize rights to occupy the unpermitted construction. It does not provide procedures through which to define rights in both the building and the land upon which it was constructed to form a single property unit that could be registered in the cadastre and transacted in the land market. The law is also not tailored to address characteristics of the different types of unpermitted constructions and the categories of land upon which they were built. For example, the law does not differentiate between unpermitted construction carried out on land owned by the constructor (i.e., an addition to an existing building registered in the cadastre) and a new building constructed on land over which the constructor possess no rights. In the absence of a framework to guide regularization of the entire spectrum of unpermitted constructions, rights in both the building and the land upon which it was constructed cannot be formalized and then registered in the cadastre.

The legislation also contains rigid criteria for excluding from the amnesty scheme, without exception, unpermitted constructions based on the type of land. All unpermitted constructions built on Public Property are excluded. This criteria serves to exclude a significant amount of the unpermitted constructions the law was intended to formalize. The bulk of unpermitted construction exists in city and town centers delineated as “urban land for construction” on land use maps produced under the former regime. Under the former legal framework this land was categorized as “socially owned land”. Kosovo’s Constitution transformed all socially owned land into Public Property. Unless the legislation is amended to address this issue, unpermitted constructions in city and town centers cannot be formalized and, according to current legislation, will have to be demolished, contradicting the policy objective the law was intended to achieve.

Similarly, unpermitted constructions on consolidated and irrigated agricultural land are excluded without exception. Large concentrations of unpermitted constructions exist on consolidated agricultural land in some areas of Kosovo. In the municipality of Vushtrri/Vucitrn, an estimated 80% of its unpermitted construction is found on this type of land.

The category of natural parks or special areas and protected zones of cultural areas is also problematic. The legislation provides no exceptions for existing unpermitted constructions on private property that was subsequently included in these areas and zones, i.e., the Bjeshkët e Nemuna National Park.

The law mandates inclusion of an unpermitted construction onto the “demolition list” in the event an application for formalization is not submitted by the deadline. Many Kosovars in the diaspora and DPs were not provided notice of the law’s deadline and other requirements. Demolition of their unpermitted constructions would deny them due process and constitute a violation of their human rights to property. Appeals are to be lodged with the MESP reviewing body. Given the large number of buildings, there is a concern that the Ministry lacks the capacity to handle the potential number of appeals that may be lodged, further constraining due process.

The law also requires payment of fees that exceed the economic means of many Kosovars, creating an administrative barrier to formalization of their rights. Although exemptions are provided to recipients of social assistance, there are no “sliding scale” provisions for low-income families who might not qualify for social assistance. In addition to the concern that notification procedures may not have met human rights standards for due process, the law does not provide for an adequate appeals process.

5.5.2. LAND CONSOLIDATION THROUGH EFFECTIVE SPATIAL PLANS

The current formal spatial planning system was unable to meet the population’s demand for housing and regulate large-scale and rapid urbanization that occurred after the conflict. Faced with insurmountable administrative and procedural barriers, and a permitting process that was non-transparent, unpredictable and often corrupt, a population in need of shelter constructed over 350,000 buildings outside the formal system. Unpermitted construction and urban “sprawl” has significantly reduced the amount of arable land and fragmented arable land parcels in rural areas. Based on data produced for the Kosovo Spatial Plan, the amount of arable land per capita is 0.24 ha/inhabitant, significantly below the European average of 0.52 ha/inhabitant. This has decreased agricultural productivity and limited opportunities to fuel economic growth through Kosovo’s agriculture sector.

The GoK demonstrated its commitment to address excessive fragmentation of arable land by developing its National Strategy for Land Consolidation to complete the consolidation process begun nearly 30 years
ago. Its purpose is to define or redefine tenure and land use rights and configuration of cadastral parcels to increase agricultural productivity. Challenges to completing the process include the failure to register reconfigured parcels in the cadastre and users of the land reverting to boundaries that existed prior to reconfiguration. As a result, perceived rights in the land and its actual use does not correspond to the agricultural activities that were planned under the consolidation strategy. Addressing these challenges and completing the consolidation process is a matter of priority to promote more efficient and productive management of the country’s arable land.

Urban land was also fragmented due to the absence of effective spatial planning and regulation of construction. Land per capita is 0.15 ha/inhabitant, which is below the normative standard of 0.17 ha/inhabitant. Current planning practices were inherited by the former centralized socialist system and have not integrated market principles. This hinders a “land development process” through which public and private investment is synchronized to promote investment and wealth creation, stimulating further investment and improving the quality of life for urban inhabitants.

In 2013, the GoK passed a new Law on Spatial Planning, to address past deficiencies in the planning process. The law’s objectives are to promote more balanced and integrated urban and rural planning across the entire territory of a municipality; provide more standardized and transparent planning rules to strengthen the role of local and central government in the planning process; and to remove administrative barriers and streamline procedures to increase efficiency and reduce the time required to issue building permits. As the law is implemented, mechanisms to monitor implementation of the plans, coupled with stronger penalties for unpermitted construction will help prevent unregulated urban sprawl and encroachment onto arable land best suited for agricultural production. The GoK can also begin to move from a process focused solely on regulating spatial planning to a process that includes the development and management of land. This will provide incentives to encourage land consolidation projects in both rural and urban areas. In the course of developing and implementing spatial plans, the GoK must comply with Kosovo’s Constitution and legislation, and the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) standards.

5.5.3. COMPLETE PRIVATIZATION OF SOE LAND TO INCREASE AMOUNT OF ARABLE AGRICULTURAL LAND AVAILABLE FOR INVESTMENT AND AGRICULTURAL PRODUCTION

The Privatization Agency of Kosovo (PAK) is mandated to privatize “socially owned” land consolidated during the 1950s and 1960s to increase investment in arable land to increase agricultural productivity. Thus far, 22,000 hectares of socially-owned arable land have been sold through spin-off privatization or asset liquidation. Some 17,000 hectares of arable land have yet to be privatized.

Privatization has not produced the expected level of investment and productivity because spatial plans in place have not been effectively enforced. Poor enforcement has enabled investors to either build unpermitted constructions on arable land best suited for agricultural production or simply hold on to the land for speculative purposes rather than to grow crops. Moreover, PAK lacks the mandate to monitor how privatized land is used and to compel investors to use it in accordance with the terms of the privatization agreement. This has contributed to further land fragmentation.

A litigious environment surrounding the privatization process further inhibits productive use of arable land. By October 2015, PAK had received and processed 5,095 claims disputing PAK’s liquidation of social owned enterprise assets, primarily land. Many of these claims could not be settled administratively and were appealed before the Special Chamber of Supreme Court, which has resolved nearly 3,000 claims since June 2003. Most claims were filed by so-called “former owners” who asserted they had rights in the land prior to its nationalization and requested restitution of the land or payment of compensation despite the fact there is no legal basis for such claims in Kosovo. Despite Supreme Court rulings that such claims lacked merit, they continued to be filed. Additionally, municipalities, who held rights over SOE land under the

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59 Law on Spatial Planning. Official Gazette of the Republic of Kosovo. Law No. 04/L-174, 07 September 2013,

former regime have filed claims in court contesting the privatization of land it considers property of the municipality. This may account for PAK complaints that municipalities have prevented it from obtaining cadastral records for arable SOE land. In this litigious environment rife with rent-seeking behavior, the transaction (and social) costs of privatization are increased, and investors do not perceive their rights in the privatized land is secure. This reduces both investor confidence and willingness to make investments to increase land productivity required to fuel economic growth.

Arable land is privatized through a 99-year lease. This unfamiliar form of private land tenure concerns investors that do not accept the tenure as secure enough to justify making investments in the land in order to increase agricultural productivity. This perception of insecurity creates further incentives for speculative investments in the land.

Additionally, legislation has not been developed to enable PAK to implement its mandate to privatize or not socially owned forest lands. It is anticipated that legislation foreseen under this Strategy to further clarify the status of socially owned property and clearly define rights and obligations related to the categories of state and public property. While the Law on Forestry recognizes forests and forestry land as public property under state ownership, legislation on PAK treats them as socially-owned property.

5.5.4. CREATING INCENTIVES TO ENCOURAGE PRODUCTIVE USE OF ARABLE LAND AND GENERATE OWN SOURCE REVENUE FOR MUNICIPALITIES

Although fifty-three percent (53%) of the total land area in Kosovo is classified as agricultural land, much of it is left fallow. No cost is incurred when land is left fallow or possessed for speculative purposes. Currently, taxes are levied on buildings and it is foreseen that a tax on land will be introduced in 2017. A transparent, fair and effectively implemented land and immovable property tax regime will create an incentive for the owners of arable land to either produce crops to recoup the cost of taxes or sell or lease the land to others who will put the land to more productive use. A tax on land will also increase the amount own-source revenue (OSR) collected by municipalities to finance investments in public infrastructure.

Tax rates are to be calculated according to market value. The tax applies to all immovable properties located in the territory of Kosovo, with some exemptions, regardless whether the property has formal legal status. All natural or legal persons that own or use property are obligated to pay tax. Since 2010, the amount of property tax revenue collected by local governments has increased by an average of 13% annually. Revenue in 2014 was approximately €20,400,000. Despite this progress, greater performance can be achieved.

A tax on property constitutes a restriction on an individual’s property rights. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) explicitly recognizes the right of a state to impose taxes and take measures that are necessary to secure their payment. Although jurisprudence of the European Court of Human Rights (ECHR) provides states with a wide margin of appreciation for deciding what kind of tax policy to pursue, state power is not unlimited. A proper balance must be struck between the legitimate aim of generating revenue to achieve public policy objectives and mitigating risks of creating excessive demands on low income and poor families. Kosovò’s tax law provides a deduction for primary residences valued at €10,000 or less. This amount, however, has not been adjusted to reflect the rise in property values. Additionally, any unused portion of the deduction cannot be applied.

64 Ibid., Articles 4, 8.
65 Ibid., Article 5.
to other taxes, including the tax on land. This may create an undue economic burden in poor and vulnerable families, including female-headed households and families among non-majority communities. The law also provides options to defer payment of taxes but imposes interest during the period of deferral.

The primary constraint to implementing a market value tax scheme is the development of a methodology to determine market value in the absence of accurate and reliable data about actual prices paid for immovable property. There is also limited capacity in the private sector, and almost none in the public, to conduct market-based valuations. Market value must be accurately determined in cases of state expropriation of private rights to property to ensure adequate compensation is paid and human rights are protected. Accurate market valuation will also inform development of multilayer value zones to determine land tax rates to generate OSR, municipal land development plans and support mortgage-based lending.

Municipalities face challenges identifying the properties to be taxed due to widespread informality and outdated cadastral records and the on-going process of assigning addresses to immovable property. Identifying the persons obligated to pay the tax is also challenging. A significant portion of rights in the cadastre are registered in the name of deceased people. The legislation does not specify who is responsible to pay taxes on the deceased's property. It also does not specify tax liability for properties co-owned or possessed and the party responsible for paying back taxes owed on transacted properties.

To address these challenges, municipalities have hired field inspectors to gather additional information from the field. But, this is time consuming and does not always produce accurate data. Municipalities do not have the capacity to consistently deliver tax bills to property owners and possessors on a yearly basis. Tax payers are not informed about their tax liabilities and are not diligent in making payments. This both reduces generation of OSR and contributes to accumulation of a debt in back taxes that may become insurmountable.

The municipal level lacks the capacity to collect taxes. Without accurate information about property owners and possessors, tax collectors cannot efficiently deliver tax bills.
6.0 RECOMMENDED COURSE OF ACTION

6.1 RECOMMENDATIONS: SECURING RIGHTS TO PROPERTY BY STRENGTHENING THE LEGAL FRAMEWORK

The Civil Code will contain a stand-alone piece of legislation dedicated to regulating all rights to private property in Kosovo. A separate piece of legislation, not to be incorporated into the Civil Code, should regulate rights to all property that is not privately owned. This piece of legislation should address, in one law, issues related to socially owned, as well as public and state (including municipal) owned property.

6.1.1. TRANSFORMATION OF RIGHTS TO SocialLY OWNED PROPERTY

- The legislation will convert socially owned rights (to urban land for construction) and 99-year leases into a right of full ownership. The legislation should clearly state that the land and building constructed above it are joined into a single property unit.

- In cases where the buildings were legally constructed on the land according to the legal framework in place, the rights of full ownership over the single property unit (land and building) could then be registered in the Municipal Cadastral Office upon completion of the requirements for registration of rights.

- In cases where buildings were not constructed in accordance with the legal requirements for construction, procedures will be developed under the process for legalizing unpermitted constructions, as discussed below under Section 5.

- With regards to 99-year leases and “urban land for construction,” the new legislation will regulate the transfer of a right to full ownership. Once the rights to full ownership are created, they will be regulated by the Law on Property and Other Real Rights that will be incorporated into the Civil Code.

6.1.2. LEGISLATION GOVERNING PUBLIC AND STATE PROPERTY

- Legislation should be drafted to clarify that public property is a general legal category which consists of state property and municipal property. This would resolve confusion over the difference between public property and state property. The law would also list in detail all assets which are owned by the Republic of Kosovo as state property. The law could follow the ideas and suggestions established in the Government’s concept note on a draft law on public property when considering the management of state property.

- Municipal property would be defined as property where the municipality is registered as a holder of a right of use. Provisions should be drafted to govern the management and transfer of municipal property. Property registered in the name of the former Yugoslavia, Serbia and their administrative bodies and agencies, including former social-political organizations of Kosovo, should be transformed into State property. In all cases where there is a right of use of socially owned immovable property and it is not clear who is the holder of such right or if a registered holder still exists, the right of use would be transformed into state property; any person who, in this specific case, makes a claim to the contrary has the burden of proof.

6.1.3. RIGHTS OF FOREIGN CITIZENS TO OWN PROPERTY IN KOSOVO

In order to ensure Kosovo’s compliance with the Stabilization and Association Agreement concerning the treatment of EU nationals’ property rights in Kosovo, the recommended policy measure is to amend the Law on Property and other Real Rights. The revision must explicitly provide for the right of foreign nationals to acquire and transfer immovable property rights in Kosovo. The rights of foreign persons to acquire and transfer immovable property may, however, be restricted in certain geographic areas such as the practice in Croatia and Montenegro where the legislator determined that it is in the public interest to reserve ownership solely for nationals, provided such restrictions are in accordance with the Stabilization
and Association Agreement. The legislator may also opt for a policy of no restrictions for foreigners to acquire and transfer immovable property rights, as is the practice in Germany. However, it is necessary that foreigners’ rights to acquire and transfer immovable property are codified in law in order to eliminate speculations about whether such rights exist and to establish a uniform administrative practice. The amendments to the Law on Property and other Real Rights would be supported by guidelines issued by the Ministry of Justice elucidating the rights of EU nationals to acquire and transfer immovable property rights.

6.1.4. REVIEWING THE LEGAL PROPERTY FRAMEWORK

A review of the legal property framework (the provisions between the legislation described above and the amended Law on Property and Other Real Rights) is necessary to eliminate inconsistencies and to provide suggestions for a uniform use and application of the developed definitions in the amended Law on Property Rights and other Real Rights and the new Law on Public Property. The review process would also suggest replacing or eliminating existing inconsistent or obsolete provisions, or even entire laws, which will have become outdated due to the new provisions.

6.2. RECOMMENDATIONS: SECURING RIGHTS TO PROPERTY BY ADDRESSING INFORMALITY IN THE IMMOVABLE PROPERTY SECTOR

Informality in the immovable property sector will be resolved when informal rights exercised de facto are recognized as law and cadastral records are updated to accurately reflect the rights recognized and in whose name they are registered. Progress made to formalize rights will be measured by the number of cadastral documents.

Five strategic initiatives are proposed to resolve informality at scale: (1) Develop new procedures and processes to make delayed inheritance proceedings more streamlined, efficient, predictable and affordable for citizens to encourage them to formalize rights; (2) Develop “enhanced” notification procedures and utilize the legal doctrine of “Constructive Notice” to increase efficiency while providing due process protections; (3) Utilize administrative processes to provide legal recognition of informal rights in order that they may be registered; (4) Develop procedures to formalize rights in unpermitted constructions (this is discussed under Section 6.5.1 below but noted here because of the large impact it will achieve to improve the accuracy of cadastral records); and (5) Create incentives and remove administrative barriers to encourage registration of formalized rights in the cadastre.

6.2.1. DEVELOP DELAYED INHERITANCE PROCEDURES

Development of procedures that will make uncontested inheritance proceedings simpler, faster and more affordable is a strategic measure to achieve impact to formalize rights and update cadastral records at scale. Up to 50% of cadastral records are registered in the name of deceased rights holders. The package of reforms required to encourage informal rights holders to initiate inheritance proceedings to obtain legal recognition of their rights are neither extensive nor difficult to implement and will achieve significant impact to update and improve the accuracy of cadastral data. Once rights are transferred from the deceased rights holder and formalized, they can be transacted in the land market and used to secure loans for investment.

Analysis of delayed inheritance proceedings and recommendations to encourage informal rights holders to initiate uncontested inheritance proceedings are provided in the USAID Property Rights Program (PRP) Report “Informality in the Land Sector: The Issue of Delayed Inheritance in Kosovo”, attached as Appendix I. The report found that although both courts and notaries have jurisdiction over uncontested inheritance claims, the notary system was established to perform the exact type of administrative review required to process uncontested inheritance claims and can do so more quickly and efficiently than the courts. It was recommended that the MoJ, as a matter of priority, determine whether notaries or courts will have exclusive jurisdiction over such claims. The report also provided a comprehensive set of recommendations to streamline uncontested inheritance proceedings.

The report found that efficient resolution of these claims was constrained by the challenges faced to deliver notice of the proceedings to parties whose whereabouts are unknown. In the context of delayed inheritance, all potential heirs with an interest in the deceased property must be informed about the proceedings in...
order to be afforded the opportunity to participate in the proceedings and assert rights in the deceased’s property. Failure to provide notice of proceedings and the opportunity to participate would violate the human right to due process. Delivery of notice is frequently complicated and time consuming because of the large number of potential heirs living in the diaspora.

These challenges are not unique to delayed inheritance claims. They also constrain efficient court resolution of contested cases, KPA (now KPCVA) adjudication of DPs’ rights and implementation of successful claims, and any other proceedings impacting the property rights of Kosovars in the diaspora, DPs, or vulnerable communities who do not enjoy easy access to state institutions. These proceedings include expropriation, demolition of unpermitted constructions, privatization of socially owned assets, duty to pay taxes, and any other claims seeking formalization of rights in property.

Legal provisions governing notice typically require hand delivery, publication in a Kosovo newspaper or posting on a municipal message board. Institutions often lack the personnel to deliver notice by hand; and local publication will not reach Kosovars in the diaspora or DPs. Notification procedures need to be “enhanced” to utilize digital technology and tailored to reach Kosovars outside the country to provide them with information and knowledge required to exercise and protect their rights to property. Because delivery of notice is a due process requirement for all proceedings impacting rights to property, development of more effective notice procedures should be treated as a strategic priority. Additionally, development of enhanced notification procedures, coupled with the legal doctrine of constructive notice, will increase efficiency of proceedings impacting rights while safeguard rights to due process.

### 6.2.2. DEVELOP “ENHANCED” NOTIFICATION PROCEDURES AND UTILIZE CONSTRUCTIVE NOTICE TO INCREASE EFFICIENCY WHILE PROVIDING DUE PROCESS PROTECTIONS

**Enhanced notification procedures**

The Republic of Estonia’s MoJ official online publication and public electronic database for inheritance proceedings provides an example of an effective means for providing notice and complying with applicable human rights standards for due process. The purpose of establishing this publicly accessible database was to disseminate as much information as possible about inheritance proceedings conducted by notaries to protect the rights of persons entitled to inherit.

The populations of Kosovo, and its neighbors Serbia, Montenegro and the Former Yugoslav Republic of Macedonia, are starting to favor digital age technologies over newspapers to obtain information. The Internet penetration rate in Kosovo is 76.6%, a rate comparable to most developed countries. Availability and access to the Internet, popularity of social media and more affordable “smart” phones create opportunities to develop enhanced notification procedures to more widely disseminate notice of proceedings to the largest number of people. This makes publication of notice on the Republic of Kosovo and civil society websites and in social media a viable option. Other forms of mass media including newspaper, television, 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.

It is essential, however, that notice procedures are robust enough to protect the rights of all Kosovars including those in the diaspora, DPs, or vulnerable communities who do not enjoy easy access to state institutions. They should be based on requirements and procedures in other European countries, such as Estonia, that have proven effective to achieve efficiency and protect rights.

Moreover, technology alone is not sufficient to ensure that rights are fully protected. The sources of notice and means of accessing information will need to be widely advertised to enable all parties with rights or an interest in the proceedings to obtain the knowledge and information required to assert their rights. It will be essential to carefully monitor and document the influence of the procedures to demonstrate that due process standards are met.

In regards proceedings involving DPs in neighboring countries, specific modalities for delivering notices could be prescribed through bilateral agreements between the Governments of Kosovo and Serbia,
Montenegro and the Former Yugoslav Republic of Macedonia. Such modalities might address how to make direct contact with displaced persons and government agencies and civil society organizations supporting the vulnerable. Through direct contact, additional information could be presented to increase awareness of the procedures, create a better understanding of how to participate in the proceedings and more diligently monitor rights through the use of digital technology.

**Constructive Notice**

Once enhanced notification procedures and mechanisms are in place to effectively disseminate notice outside Kosovo, the legal doctrine of constructive notice could be introduced to improve efficiency and safeguard the rights of due process. Constructive notice is currently applied in Kosovo. It is authorized under the Law on Non-Contentious Procedure (notice of the proceedings to be published in a Kosovo newspaper for 6 months if identity of heirs is not known) and immovable property registration regulations (notice of changes to cadastral information to be posted on the municipal notice board for 5 days).

Constructive notice is a legal doctrine that presumes all parties with an interest in the claim are provided with information and knowledge about the claim that can be acquired by normal means. This would include through websites and other technologies. 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.

The doctrine requires that once a notice of a claim or proceeding is disseminated, it is the responsibility of the parties with an interest in the proceeding to come forward to assert their rights. If the relevant parties do not come forward within a prescribed deadline, they are precluded from asserting their rights and the proceedings can then move forward. Provided the notification is sufficiently robust, constructive notice removes, for example the burden on potential heirs to ensure the participation of all potential heirs in uncontested inheritance proceedings. The doctrine also promotes finality of the rights registered in the cadastre. The doctrine will also help achieve finality of administrative decisions providing legal recognition of informal rights to enable their registration in Kosovo's cadastre.

6.2.3. **UTILIZE ADMINISTRATIVE PROCESSES TO PROVIDE LEGAL RECOGNITION OF INFORMAL RIGHTS**

Informal rights holders exercising de facto rights over immovable property must establish a “chain of title” to demonstrate that he or she acquired rights from a formal rights holder in a lawful manner before these rights can be legally recognized and then formalized through registration in the cadastre. Kosovo’s court and cadastral systems do not provide citizens with access to streamlined administrative procedures and processes to adjudicate and offer legal recognition of informal rights. The only means available to citizens to formalize rights in property they exercise de facto, i.e. rights created through a verbal contract, is to initiate a contested claim in the courts, even if the rights are not contested. This is an inefficient use of the court’s limited resources to resolve disputes. Moreover, court claims are expensive and time consuming. This creates disincentives to formalize rights and helps to perpetuate informality.

The Government of Kosovo recognizes the need to comprehensively and systemically resolve the legacy of informality that existed prior to the conflict, which was compounded by displacement during the conflict and that is now manifested in outdated and inaccurate cadastral documents. The recent legislation establishing the KPCVA provides an opportunity to utilize administrative processes to systemically adjudicate and provide legal recognition of informal rights. The KPCVA's Property Verification and Adjudication Commission (PVAC) is mandated to review and compare all cadastral documents returned from Serbia against Kosovo’s cadastral documents to adjudicate (subject to right to appeal in the courts) the rights that will be finally registered in the Kosovo cadastre.

The PVAC’s function is to confirm the “chain of title” that provides the basis for determining which rights will be registered. In carrying out its function, it will utilize streamlined administrative procedures informed by the practices developed by the KPA through adjudication of nearly 43,000 property rights claims. The KPCVA is also mandated to implement the backlog of KPA decisions filed by persons displaced by the conflict, the majority of whom were ethnic Serbs. Because one of the drivers of informality in Kosovo were
informal contracts for the sale of immovable property between ethnic Albanians and Serbs, KPCVA institutional capacity, effective and streamlined administrative adjudication procedures and best practices, could be applied in administrative proceedings to more efficiently resolve a root cause of informality.

Adjudicating and providing legal recognition of informal rights through administrative procedures from a relevant state institution would secure legal recognition of informal rights. Alternatively, the KPCVA could fulfill this function given KPCVA’s prior experience and procedures already installed.

Regardless of which option is pursued, it is vital that the GoK initiate timely measures to encourage and enable citizens to access an efficient and affordable administrative adjudication process to obtain legal recognition of their informal rights and then register their rights in the cadastre. Utilization of enhanced notification and constructive notice procedures would serve to strengthen security and finality of rights adjudicated through administrative processes. Information about rights recognized and pending registration would be published and accessible to citizens who, through the exercise of reasonable diligence, would be provided with notice of proceedings impacting their rights to property. Currently, cadastral registration legislation requires only that notice of a change in the registry be posted on the municipal notice board for five days. Enhanced notice using digital technology and a longer period within which to file an objection would significantly increase the reach of notice and provide all interested parties the opportunity to contest the rights to be registered. If a party does not exercise reasonable diligence, he or she would be precluded from contesting the rights registered.

In the absence of such an adjudication process, few options exist to update and improve the accuracy of the country’s cadastral data. The lack of an accurate and reliable property rights registry is the greatest constraint to ensuring the rights of all Kosovars: its men, women, members of non-majority communities as well as those displaced by conflict.

6.2.4. DEVELOP PROCEDURES TO FORMALIZE RIGHTS IN UNPERMITTED CONSTRUCTIONS

More than 350,000 homes, buildings and shops constructed without a permit lack legal status and the rights in them cannot be registered in the cadastre. This is a significant source of informality that impacts economic growth. One of the issues preventing formalization of rights in these buildings is delayed inheritance because applicants seeking to formalize rights in a building cannot demonstrate rights in the land upon which it is constructed. Reforms to make it easier to obtain an inheritance decision will make it easier to formalize rights over these buildings and achieve great impact to update and improve the accuracy of cadastral information. Additional recommendations to improve the process of treating unpermitted constructions are discussed below under Section 6.5.1.
6.2.5. CREATE INCENTIVES AND REMOVE ADMINISTRATIVE BARRIERS TO ENCOURAGE REGISTRATION OF FORMALIZED RIGHTS IN THE CADASTRE

Once informal rights receive legal recognition, they must be registered in the cadastre to complete the formalization process. Rights registered in the cadastre can be more efficiently exercised and enforced by the courts. It is essential that once rights are formalized, they are registered and never again transacted outside the system. Incentives need to be developed to encourage citizens to register their rights. Additionally, administrative requirements that increase cost and time, that are not transparent and lead to unpredictable results create barriers that will discourage registration of rights that are legally recognized.

As an overarching recommendation, the Kosovo Cadastral Agency (KCA) should, as a matter of priority, conduct a full business analysis of its procedures to ensure accurate registration requirements, which will help increase the efficiency, affordability, transparency and predictability of the registration process. The objective of the analysis should be to identify any administrative barriers, high fees and inconsistent practices and develop recommendations to ensure consistent registration practices in all MCOs. In advance of this analysis, stakeholders provided the following recommendations to improve service delivery in the MCOs:

- A list of all documents eligible for registering property in the cadastre must be produced and included in legislation regulating the cadastral system;
- Strengthen the institutional relationship between the KCA and MCOs to establish uniform business processes and standards for delivery of services;
- Develop standard forms, templates and instructions to register and transact rights;
- Standardized templates and forms should be designed by the KCA, courts, notaries and relevant administrative agencies to provide information required to describe the property as well as include the descriptions in decisions or other legal acts that convey property rights. This will help resolve minor issues such as misspelled names or discrepancies in parcel numbering that can delay registration of rights;
- Create clear procedures and guidelines to ensure consistent registration practices in all MCOs;
- Develop a training program for MCO staff to improve service delivery;
- Design policies that distinguish between the recognition/formalization of rights and the transaction of rights and procedures, costs and fees respective to each;
- 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;
- Design 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
- Design policies 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.

At present, the World Bank, through its Real Estate Cadastre and Registration Project (RECAP) that provides the KCA with funding and technical assistance to reconstruct Kosovo’s Cadastre, is conducting a full business process analysis of its registration procedures and processes. It is expected that this analysis will 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. The comprehensive recommendations the RECAP cadastral experts will produce to improve the registration process should be incorporated into this Strategy once they are completed.
6.3 RECOMMENDATIONS: GUARANTEEING AND ENFORCING THE PROPERTY RIGHTS OF DISPLACED PERSONS AND NON-MAJORITY COMMUNITIES

DPs are not a homogenous group and provision of an effective remedy depends on the needs and circumstances of each. Some have full ownership rights in their properties while others have only a right of use. They also possess rights over different types of property. A remedy appropriate to agricultural land may not be appropriate for a residential flat. Each DP will have different needs and desires regarding access to and exercising control over their properties.

The GoK must ensure that the full range of remedies currently provided in law will be made available to DPs and implemented after the temporary mandate of the KPCVA concludes. The most permanent remedy available to the successful claimant is restitution of his or her property. Registration of the KPA decision in the cadastre is the first step to ensure the right of successful claimants to request an eviction, is protected. The KPA decision provides the legal basis for an eviction. Registration of the decision would enable the successful claimant to contact the Kosovo Police or private bailiff to request an eviction. The police or bailiff could then check the cadastre to confirm a KPA decision has been issued for the claimed property and that the request for eviction is legally justified. Currently, the KPA has executed evictions free of charge. Policies should be developed to determine the circumstances under which successful claimants will be required to pay for evictions in the future. Consideration might be given to providing successful claimants with the right to request one eviction to be executed by the Kosovo Police free of charge and any subsequent evictions to be executed by a private bailiff for a fee.

The rental scheme currently operated by the KPA can serve as a model for implementing the additional remedies through the private sector. Under the rental scheme, a portion of the rent charged for the property is retained by the KPA to cover the costs of operating the scheme. Private real estate firms could follow a similar model and take over the rental of successful claimants’ residential properties from the KPCVA. Similarly, private firms could act on the behalf of successful claimants to lease their agricultural land or offer for sale through auction other immovable property.

Improved means for communicating with successful claimants should be established to support the transition of functions from the KPCVA to private entities. Utilization of “enhanced” notice would help facilitate two-way dialog between DPs and state institutions. Through two-way dialog, successful claimants would be able to articulate their needs and preferences and the KPCVA would provide information they need to select and access available remedies.

The KPCVA should take the lead to develop processes for delivery of remedy through private sector entities during the 18-month period prior to which its mandate to administer and rent properties ends. It may be too ambitious to expect all its duties could be completely transferred to private entities during this period. The GoK should consider whether the KPCVA would continue to provide oversight of the transition after 18 months or whether another state institution, for example the Ministry for Minorities and Returns, should provide oversight.

6.3.1. ENSURE IMPLEMENTATION OF REMEDIES AVAILABLE TO DISPLACED PERSONS AFTER THE CONCLUSION OF THE KPCVA MANDATE

In advance of the conclusion of KPCVA’s mandate to administer and rent successful claimants’ properties, the following steps are proposed to be taken by the KPCVA to facilitate a “hand over” of its functions to private entities:

Step 1: Document that all HPCC, KPCC and PCC decisions recognizing the rights of successful claimants are registered in Kosovo’s cadastral system. It is essential that these final and binding decisions are reflected in cadastral records to ensure the rights of the successful claimant will be recognized and enforced by state institutions, especially the right to request that an eviction be carried out by the Kosovo Police and private bailiffs. Registration also provides greater transparency about the rights of the successful claimant and provide due process protections in any proceedings that would impact his or her rights to property.
Step 2: Develop procedures and specifications to guide the handover of KPCVA functions to private entities. Clearly defined procedures must be developed to ensure successful claimants can directly request the Kosovo Police and/or private bailiffs to execute evictions. Procedures will need to be developed for successful claimants as well as police, bailiffs and the cadastral. KPCVA should pilot and test these procedures during the 18-month transition period. The requirements for renting, leasing and auctioning successful claimants’ immovable properties should be defined, and procedures developed to provide successful claimants access to remedies. Procedures should also be developed to document that the remedies are available and accessible by successful claimants.

Step 3: Facilitate and strengthen two-way communication between the KPCVA and DPs. Enhanced notice procedures should be utilized to reduce the time required and burden on the KPCVA to directly contact each successful claimant. While Article 13 of the KPCVA law authorizes the use of public notice, it does not define its requirements. An Administrative Instruction should be developed to specify the requirements of robust, enhanced notice.

Through enhanced notice, successful claimants would be informed that the KPCVA will not contact them directly about a remedy, rather it is the successful claimants’ obligation to contact the KPCVA to request remedy. This will improve efficiency while also safeguarding the rights of the successful claimant.

The KPA has established a call center to facilitate better communication with claimants to speed up processing of their claims. The call center would also serve as the means through which successful claimants would request remedy from the KPCVA during the transition period and through which successful claimants will be informed about how to request a remedy after the KPCVA mandate concludes. Because it may be too ambitious to expect the KPCVA to complete the transfer of its duties to the private sector and with procedures in place to enable successful claimants to request remedy from the private sector, the GoK should consider keeping the call center in place after 18 months. As the KPCVA mandate to compare cadastral documents is not time bound, one option might be to transfer the KPCVA duties to implement remedies to the private sector but continue to manage the call center to provide coordinating support until the transition is completed.

Step 4: Prior to concluding its mandate, the KPCVA should document that procedures are in place to enable successful claimants to request evictions after the KPCVA mandate concludes and can access remedy from the private sector.

6.3.2. DEVELOP INTERVENTIONS TO ADDRESS ISSUES RELATED TO DISPLACEMENT, ACCESS TO JUSTICE AND HOUSING

The following interventions are proposed to address the most significant issues identified by stakeholders during the development of the NSPR as creating challenges for DPs and members of non-majority communities to exercise their rights to property and constraints to accessing justice and housing:

- To prevent illegal re-occupation after a KPA eviction, develop procedures that would require the KPCVA (or enable a successful claimant after two evictions of KPCVA or after two evictions of KPCVA or conclusion of the KPCVA mandate) to request the Kosovo Police or private bailiff to immediately enforce the original KPA eviction order prior to referring the matter to the Prosecutor’s Office. Internal guidelines should be developed for prosecutors to seek criminal penalties for illegal re-occupation and be trained to effectively prosecute criminal charges to deter illegal re-occupation in the future.

- Develop judicial guidelines to prevent re-litigation of final HPCC, KPCC and PCC decisions. The Kosovo Judicial Council should take disciplinary action against judges who willfully ignore the guidelines to hold them accountable.

- The GoK should either provide funds from its budget or seek donor funding to implement demolition of unlawful third party constructions on illegally occupied land, or to provide compensation for claims filed with the KPA on the grounds of third party constructions and to compensate the so-called “A” & “C” category claimants.
• Fully implement provisions contained in Article 5 of Law No. 03/L-204 “on Taxes on Immovable Property” to ensure DPs are not liable for taxes on properties over which they cannot exercise effective control; and the provisions contained in the Administrative Instruction on ‘Exempting property rights holders from payment of utilities for properties under KPCVA administration.’

• Implement “enhanced notification” procedures in all proceedings impacting rights to property, including expropriation, demolition of unpermitted constructions, privatization, delayed inheritance proceedings and any other claims seeking formalization of rights in property to ensure DPs have access to information required to protect their rights to property.

• Ensure “enhanced notification” is applied to reduce instances where temporary representatives are appointed to represent the interests of DPs in court proceedings and establish accountability mechanisms to ensure that, in cases were temporary representatives must be appointed, the legal representation they provide is of sufficient quality to protect the rights of the DP.

• Develop policies to efficiently allocate risks and liability to achieve equitable remedies in cases of fraudulent sales of immovable property.

• Revise eligibility criteria for free legal aid to include DPs and persons residing in informal settlements; and, substantially increase government funding for the free legal aid Agency.

• Introduce unified court fee regulations, whereby DPs in precarious socio-economic conditions are exempted from paying court expenses (DPs’ occupied properties should not be counted as personal wealth).

• Fully implement in practice the provisions contained in Law No. 02/L-37 “On the Use of Languages” to ensure members of non-majority communities can access information and fully participate in proceedings impacting their rights to property.

• Adopt the three-year Kosovo-wide strategy on Social Housing and strengthen consistent implementation of Law No. 03/L-164 on Housing and Financing Specific Programs and Law No. 04/L-144 on Allocation for Use and Exchange of Immovable Property of the Municipality to ensure sustainable housing solutions for repatriated persons.

• Harmonize and implement the Strategy for Regularization of Informal Settlements 2011-2015 with provisions of the Law on Spatial Planning and procedures to regularize unpermitted constructions to provide comprehensive and sustainable solutions for the 100 informal settlements primarily inhabited by members of the RAE communities.

6.4 RECOMMENDATIONS: GUARANTEEING AND ENFORCING THE PROPERTY RIGHTS OF WOMEN

Although Kosovo’s Constitution guarantees women the same rights to immovable property as men, cultural norms and practices exert pressure on women to renounce their rights to inherit property from birth families and spouses. Minor children of women pressured to renounce are also prevented from inheriting family property. Women cohabitating with men in informal marriages face even greater challenges to inherit. Presented below are recommended procedural measures to prevent exclusion of women from inheritance proceedings and safeguard the rights of women and their minor children to inherit immovable property.

6.4.1. CONSISTENT RECOGNITION OF ‘FACTUAL’ MARRIAGES

While the Family Law recognizes ‘Factual’ marriages immediately after they have occurred, the Inheritance Law does not treat them as equivalent to a registered marriage, excluding spouses from property claims after the other’s death, unless they were married for ten years, or 5 years with children. The Laws on Inheritance and Family should be amended and harmonized to provide legal recognition of cohabiting relationships as marriages after 5 years or 3 years if there are children from the relationship to prioritize the well-being of children to align with the practices of other countries in the region. Additionally, consideration
should be given to creating a legal option for the registration of cohabiting relationships in which the parties do not wish to be married. This would align Kosovo practice with other European countries where more couples choose to cohabitate without being married.

6.4.2. DEVELOPMENT OF SAFEGUARDS IN CASES OF EXCLUSION AND RENUNCIATION

In the absence of independent means through which judges and notaries can verify the identity of family members eligible to inherit immovable property, heirs who bring an inheritance action to a notary or a judge should be required to swear upon penalty of law that they are not concealing any known heirs. In parallel, the data management capacity of the Civil Registry System should be improved to enable municipal offices to produce an accurate and reliable list of the deceased’s family members.

Any heirs declaring their intent to renounce their right to inherit should be required to make this declaration at a special session before a judge or notary. It is essential that during this session, female heirs are fully informed about their rights and the value of their portion of the estate that they intend to renounce before taking a final decision. Additional procedural safeguards are discussed in the Delayed Inheritance report attached as Annex 1 to protect against the exclusion and concealment of female heirs.

The Law on Inheritance requires division of an estate among all surviving heirs as soon as the inheritance procedure is completed, which can occur immediately following death. This makes it legally possible for a surviving spouse to lose their residence soon after the death of their spouse if the property is divided into shares and distributed.

To foreclose the possibility that a surviving spouse will lose the right to inhabit his or her home, the Law on Inheritance should be amended to delay the mandatory estate distribution until after the death of the surviving spouse to allow the living spouse access to the marital home and property until death. An alternative approach would be to allow the surviving spouse use rights to the marital home and property until their death or remarriage. Both of these mechanisms protect the welfare of the surviving spouse and can be implemented regardless of whether a female spouse took steps to renounce her rights to inherit from her spouse.

6.4.3. PROTECTING THE INHERITANCE RIGHTS OF MINOR CHILDREN

Currently, any heir that renounces the right to inherit also renounces the inheritance of their minor children, without any external actor involved to ensure the best interests of the child. While on most occasions parents appropriately represent the minor’s interests, when it comes to the renunciation of inherited property, virtually all countries involve non-family legal representation to guarantee the best interests of the child. This special protection does not undermine the primary responsibility of the parent or legal guardian to care for the child, but is a state action to protect the interests of future citizens.

Article 130.3 of the Law on Inheritance currently states, “If his successors are minors, permission for the renunciation from the custodian body shall not be required.” This law needs to be altered to require oversight of a custodial body whenever courts decide on cases regarding the renunciation of the rights of minors. However, if uncontested inheritance cases are heard before they are notarized, there also needs to be procedural safeguards, outside of the family, that provide oversight of the best interests of the child. Indeed, given that uncontested inheritance cases handled by notaries are inconsistent, it is necessary to have some sort of custodial oversight that protects the rights of minors. Custodial oversight is recommended for contracts “inter-vivos” to ensure that the interests of minors are protected.

The custodial body described in Kosovo’s draft Law on Child Protection is a municipal-based body for protection of the interests of the child, consisting of a group of experts that operates in the Centre for Social Work. This body is the most appropriate type of oversight for the protection of the best interests of the child in uncontested inheritance cases as it safeguards the interests of minor children in other legal contexts. Because inheritance cases can be legally complex and young people may not be able to fully assess the benefits or disadvantages to them; it has been suggested that the custodial body provide advice to young adults up to age 21 as to their best interests.
6.5 **RECOMMENDATIONS: USING SECURE RIGHTS TO PROPERTY TO FUEL ECONOMIC GROWTH**

Recommended interventions under this Objective are intended to mitigate the harmful effects of unpermitted constructions by clarifying the legal status of rights in both the building and the land upon which it was constructed to form a single property unit that can then be registered in the cadastre and transacted in the land market. This will unlock the economic benefits that can be realized from the investment in the construction (i.e. use it as collateral to obtain financing for investment) and market transactions of formalized rights. At the same time, spatial plans must be enforced to prevent unpermitted constructions from encroaching on fragmenting arable land needed for increasing agricultural productivity and growth of Kosovo’s agricultural sector. Spatial plans can also be used to create incentives to consolidate land to promote development. Interventions are also recommended to increase the amount of arable land privatized, provide greater security for investors and create incentives to help ensure agricultural land sold to investors is used for agricultural production and not as a speculative investment.

6.5.1. **TREAT UNPERMITTED CONSTRUCTIONS**

The current legislation provides applicants only the opportunity to formalize their rights to occupy the unpermitted construction. Amendments should be developed that create incentives to encourage formalization and provide the legal mechanism through which applicants can formalize rights in both the building and land as a single property unit and then register their rights over this property unit in Kosovo’s cadastre.

The amended legislation should be tailored to efficiently formalize rights according to the circumstances surrounding each type of unpermitted construction. In cases where the applicants possess rights in the land on which the unpermitted building was constructed, fees should be less and procedures simplified to create incentives to formalize rights that exist de facto and do not impact the rights of third parties or present risks to public health and safety. Under such circumstances, the legal mechanism for registering rights over a single property unit in the cadastre should also be streamlined and made affordable for all applicants.

Legislation should also address circumstances under which the unpermitted construction encroaches, in whole or in part, on land owned by third parties. Under these circumstances policies and legislative guidance is required to arrive at a fair and equitable solution to assign clear legal status to the rights in the land and the building. Options include allowing the parties to resolve the issue themselves. They could, for example, agree a price to be paid by the constructor for the land encroached upon, or agree that the land owner would take rights in the unpermitted construction. Another option would be for the state to expropriate the land in question and then pay market-based compensation to the land owner. Ideally, an accurate and comprehensive market value map of Kosovo will be developed to determine fair compensation in compliance with applicable human rights standards.

It is essential that due process safeguards are in place to ensure land owners have information and knowledge to protect their rights. Enhanced notification procedures should be utilized to ensure all land owners, especially those in diaspora, DPs and members of non-majority communities are provided notice to enable them to participate in the proceedings.

To ensure the overarching objective of the amnesty scheme is not frustrated, exemption clauses should be developed to provide a more flexible approach to determine eligibility. This is preferable to rigid categorical exclusions that would preclude large numbers of otherwise suitable unpermitted constructions from being formalized.

The formalization process must be accessible to all Kosovars. Fees should be reduced for Kosovars with low incomes and cumbersome administrative barriers, such as the requirement to provide architectural drawings with applications, should be eliminated. Incentives should be developed to encourage women headed households to formalize their property rights.
6.5.2. LAND CONSOLIDATION THROUGH EFFECTIVE SPATIAL PLANS

Before effective land consolidation initiatives can have effect, it is first necessary to prevent unpermitted constructions from further fragmenting land parcels in rural and urban areas. Procedures to obtain building permissions should be made simpler, more affordable and transparent to encourage citizens to follow planning procedures and to reward them for doing so.

Municipalities should increase emphasis on monitoring and enforcing spatial plans and strengthen enforcement powers of building inspectors to prevent unpermitted construction at the time actual construction begins. Penalties in Kosovo’s Criminal Code and administrative instructions should be rigorously enforced to serve as an effective deterrent. In parallel, outreach and education campaigns should be targeted at both municipal officials and the public at large to inform them of the severity of the issue and the penalties for not complying with the spatial plan.

After strengthening mechanisms to enforce spatial plans, municipalities should begin to implement Land Value Capture (LVC) tools to encourage land consolidation and promote development objectives. Such tools emphasize planning as a development process rather than a mechanism to regulate construction of residential buildings. The tools also create incentives for land owners to contribute land and invest in larger scale public development projects.

In parallel, it is important to conduct a review of policies and legislation on land consolidation focusing on unfinished agricultural land consolidation projects initiated in 1980s.

Transformation of forest and forest land from socially-owned property to state property and harmonization of the Law on Forest and PAK Legislation also has implications on effective use of land. Any public development projects that require expropriation of private land must comply with the provisions of Kosovo law and applicable human rights standards. This requires clear criteria for determining whether the expropriation serves a public interest and, if so, that adequate compensation based on the market value of the land expropriated is paid to its private owner.

6.5.3. PRIVATIZATION OF FORMERLY SOCIALLY OWNED ARABLE LAND

Investors who purchased SOE land through privatization procedures must perceive their rights in the land as secure before they will make the level of investment required to increase agricultural productivity and help fuel economic growth. Conversion of the 99-year lease issued by PAK into rights of full ownership will help to strengthen tenure security for investors. Investors also need to be protected from ungrounded lawsuits seeking restitution for land consolidated under the former regime. The Kosovo Judicial Council should apply sanctions against judges who allow claims not grounded in law to proceed against purchasers of privatized SOE land.

Once privatized, mechanisms must be strengthened to ensure that purchasers put arable agricultural land to productive use rather than as a speculative investment. If PAK lacks the mandate or resources to monitor and enforce the terms of the privatization sale, the GoK should either expand its mandate and resources or create another body to carry out this function.

6.5.4. CREATE INCENTIVES TO ENCOURAGE MARKET TRANSACTIONS AND PRODUCTIVE USE OF ARABLE LAND

Imposition of a tax on land will create an incentive for owners of arable agricultural land to either use the land for agricultural production or lease the land to someone that will. Imposition of a rational and fair taxation scheme is constrained by a lack of information about actual market prices with which to determine rates at which land will be taxed. Procedures must be developed to guide market-based appraisals and require reporting of actual prices paid for immovable property and recording this information in the cadastre. The use of private appraisers should be considered.

The purpose of the appraisal is to provide market data with which to determine tax rates. The tax rates imposed by the GoK, however, should be calculated not to exceed the ability of Kosovars to pay. Policies will need to be develop to provide tax relief for poor and vulnerable members of Kosovo society.
Once an accurate, fair and equitable tax rate is established, capacity at the municipal level must be built to efficiently deliver tax bills and collect taxes. Effective collection of tax revenue will significantly increase the amount of OSR generated by the municipality.