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EXECUTIVE SUMMARY OF THE THESIS

International Women's Rights Law versus Traditional Societies: Practices of Exclusion of Women from the Right to Property and Inheritance in Kosovo

The adoption of the Universal Declaration of Human Rights brought to the world the headline of the new era, where human rights would be universal, and indivisible, independent, and interrelated. An indivisible part of human rights are women's rights, which in this dissertation have been treated as inseparable and identical. Among the human rights values established by the United Nations, gender equality is one of the preconditions for the functionalization of a democratic society. Furthermore, as human rights are indivisible and interrelated, equal ownership of women, "access to and control over land, and the equal right to own property and adequate housing contribute to the full realization of human rights." The right to life is a fundamental right, and the right to property is a human right, which allows people to realize the first one. Providing the first without the latter is not possible and violating the right to property in violation of the right to life. This research focuses on the right of women to property and inheritance. The primary intention to elaborate on the right to property as a key to all other rights, recalling the social contract theory of John Locke, that the property is a mean of subsistence of life, thus, the violation of the right to property is a violation of the right to life. In this case, the violation of the right to property is a foundation of women's discrimination in the family, participation in economic, political, social, and cultural life and the position in the society.

As an indivisible part of human rights is the rights of women to property and inheritance. Besides the fact that it is a human right, property and land are a vital factor of production and often represent the major part of a family or household's wealth. Land and real property can provide direct income through lease and sale, as well as act as serving as collateral for a loan. Formal rights to land for women can have an impact on intra-household decision making, income pooling, and women's overall role in the household economy. Thus, if women are excluded as formal owners of property due to the influence of the traditional codes and practices present in society and discriminatory laws, it has a direct impact on their economic well-being as well as in their independence, which can also lead to their physical and psychological violence or abuse.

Kosovo is the youngest state in Europe, who declared its independence in 2008, after being under the U.N. Administration since 1999, following the intervention of NATO to prevent genocide against the Albanian population from Serbia. However, the Albanian population is an old society that has resisted assimilation under some of the greatest empires that have passed through the Balkan Peninsula. Albanian society in Kosovo, Albania, Macedonia, Montenegro, Serbia, other Balkan states and beyond, have been governed by traditional oral laws, as part of a tradition that kept the society together, and a form of internal governance. These traditional patriarchal laws, with an ultimate discriminatory attitude towards women, became a way of living and touched every instance of the society.

Thus, Kosovo was chosen as a case study, the practices of excluding women from the right to property and inheritance, considering that there are sufficient facts and data that this phenomenon is present in Kosovar society. However, in order to achieve the point where a full picture on the position of women in the society in Kosovo, this dissertation will provide a thorough analysis of the traditional societies, with particular focus on traditional Albanian elements of the society that are still present in the contemporary times in Kosovo and Albanians who live in the Balkans.

Through the case study of Kosovo presented in this research, chosen because it represents a small state on its path towards the consolidation of democracy, with an ancient history and population that had governed themselves with traditional oral laws that have served for centuries to regulate their lives, family structure and power relations in the family. However, the Constitution and the laws in force in Kosovo reflect the highest principles of democracy, including equal rights for women and men in all spheres of life. Nevertheless, the patriarchal system that existed in the past made its way in the present society in Kosovo. As one of the main characteristics of patriarchy is the subordination of women and the power of men over women and children, patriarchal norms and traditions that continue to exist, underpin the realization of the rights of women to property and inheritance in Kosovo, as one of the premises for women's independence and equality in the family, which is what patriarchal system opposes.

Kosovo is the best example to represent the arena of struggle and clash between the law and patriarchy, a system that continues to live in the society and stays there to serve as an alternative legal system, whenever the rule of law and institutions of the state fail. Patriarchy allows people to take justice matters on their own hands. One of the strongest features of patriarchy and traditional societies presented in this dissertation is its discriminatory approach towards women. Thus, as the society keeps traditional norms to solve "private matters," it allows discriminatory

traditions to flourish in society and, therefore, the patriarchal system to be deeply rooted in societal behavior. In this dissertation, I have presented how traditional norms are practiced in excluding women from the right to property and inheritance, despite that the legal framework in place grants these rights to women. The domestic and international researches conducted on the rights of women in Kosovo have reported persistently that these attitudes are still represented and represent the main challenge to gender mainstreaming in Kosovo and the implementation of gender equality standards that derive from the law and Constitution of Kosovo. Moreover, researches have shown that there are several factors that influence the subordination of women and the low participation of women in society. As Mahoney writes in her article about Women's Rights, before using the legal base to combat inequality, we should evaluate and understand the aspects that underpin the relationship and create social and sexual inequalities between men and women in the society. Disadvantages of an Albanian woman in Kosovo originate from her position in the family, influenced by the discrimination that the society draws between men and women. This discriminatory attitude is strongly influenced by culture and mentality, level of education and poverty, and by the Albanian tradition and religion. The cultural influence remains strongest influence in development of the women in the aspect of education and employment due to the incapacity of women to work and be equally educated. However, among the indicators that have been already elaborated by existing researches on the position of women in the society, tradition and culture is considered as only one of them, equally influential with other aspects such as the rule of law and justice system, unemployment and economic development, education and the lack of awareness, other factors such as low implementation of the rights at work, maternity leave, and other factors that make it more difficult for women to become part of the labor market and the active working population of the society.

Based on these findings, I have elaborated on the role of the state, presenting in this dissertation the crucial role of the state in ending injustice and inequality against women's rights to property and inheritance in Kosovo. Thus, I have thoroughly presented the role of the state and what can state institutions, government, parliament, and judicial system do to change the situation. In this light, I ask the question on

RESEARCH QUESTIONS: What is the role of the state and society in discrimination of women's rights to property and inheritance, and how is that reflected in the position of women in the society? As a supporting research question is also: How does traditional customary law

influences the lives of people of a democratic country, who strive towards gender equality, but the traditional constraints are yet too strong?

HYPOTHESIS: Traditional behavior in a society, based on traditional customary law, which is discriminatory towards women, hinders the implementation of women's rights based on international law, and hinders the domestic strategies for implementation of laws and creation of gender equality environment. Women's rights to property and inheritance is one of the fundamental rights, particularly tackled by the domestic traditional law, with the purpose of eliminating the chances of economic independence of women, which is a premise for gender equality in the society and better position in the family. Therefore, my main hypothesis is that in a patriarchal society, the society chooses to discriminate women, by hindering the implementation of laws that provide equal rights to property and inheritance for women, thus a patriarchy is not a situation that the society is found on but rather a state in which they chose to remain.

To provide an answer for my research question and test my hypothesis, I have chosen to study the practices of exclusion of women from the right to property and inheritance in Kosovo. This dissertation will include both qualitative and quantitative research methods using a mixed-methods approach is necessary to provide enough facts and information that will allow me to support my claim and answer the research question.

Taking into account that to be able to provide a reliable statement based on quantitative data, a particular sample has to be provided, I have decided to use the existing researches conducted by international and domestic civil society organizations in Kosovo in the field of the rights of property and inheritance in Kosovo, general and with particular focus on the rights of women. Therefore, the main reference data presented in this dissertation are based on the researches of USAID – Property Rights Program, OSCE, BIRN – Balkans Investigative Journalism Research Network, Kosovo Agency of Statistics, Kosovo Center for Gender Studies, Kosovo Women's Network, and other CSOs in Kosovo such as Democracy for Development and Polis, who have conducted quantitative researches in this or related fields. To compare the development of the rights of women to property and inheritance, through a comparative analysis I have followed up chronologically the parallel development of the right to property and inheritance with other developments in Kosovo throughout the years and political changes. Thus, the inclusion of a number of quantitative researches in this dissertation is done in order to provide a chronological development of the statistics on women's property ownership and inheritance, to compare with the development of other indicators such as

education, employment, domestic violence rates etc.,

The qualitative research in this dissertation is concentrated on desk research of archives, laws and regulations, international and domestic in the field of human rights, the rights of women in general and in particular the rights of women to property and inheritance. An extensive concentration in thorough study of international law and domestic laws on women's rights is included as the main comparison in this dissertation is the opposition between traditional societies and international human rights law on the rights of women, and the particular aspects of international law that prohibit discrimination of women based on traditional practices. This dissertation will have its main concentration on international law and domestic law that rule out cultural relativism as a justification for discrimination of women. This dissertation seeks to establish a correlation between the right to life and the right to property, and how the violation of the right to property and inheritance diminishes the importance of other rights or hinders the full realization. Therefore, a clear and concise investigation and research of concepts and terms is necessary.

Although Kosovo is a young state, not yet a member of United Nations, E.U. or the Council of Europe, it has adopted the human rights standards that derive from international law treaties and conventions, including regional conventions on human rights, including its provisions in its Constitution and laws. Moreover, many researches presented in this dissertation have confirmed that Kosovo has a flawless legal framework that guarantees gender equality and equality on women's rights to property and inheritance. However, the main challenge stands with implementation of these laws where the discrepancy between the law and practice is a huge concern. The Constitution guarantees equal rights to property and inheritance in Kosovo, and the Laws on Inheritance, Gender Equality, and other Laws as well that directly or indirectly guarantee equality for women on their right to inheritance. However, the statistics presented in this dissertation have shown that the number of women that inherit family property or are property owners is about 20%, which is the lowest in the Balkans. Through a historical analysis, in this dissertation I have shown how the traditional norms continued to live in the Albanian society in Kosovo, which has allowed me to support my claim that patriarchy has remained present, even when the regimes have changed. Through presentation of Albanian society over the decades I have shown how patriarchy in Kosovo has transformed and camouflaged but has not been eradicated.

Although many studies presented in this dissertation have claimed in conflict and societies in transition the traditional norms tend to be re-instated, this dissertation provided the evidence

that tradition in fact was always there. Starting from the Yugoslav era, where Albanian population were a minority, whose rights were widely violated, and moreover the war of 1999 was just an explosion of the events that had followed from the previous decades, the Albanian population faced existential issues, where more than 13,000 people were killed and more than one million were forcibly removed from the country. During this period, women were a very vulnerable category, as international organizations assessed that over 20,000 women were raped and sexually abused, where rape was used as a tool of war. Moreover, per Albanian tradition, women constituted the honor of the family, thus abused women would bring shame to the family. Consequently, neither perpetrators were ever brought to justice, and neither women were ever able to heal their trauma because of the traditional norms and social prejudice.

The inferior position of women in the society was supported also by U.N. administration that was established in Kosovo in 1999 based on the resolution 1244/99 of the Security Council. Women's rights CSOs in Kosovo have evidenced throughout the years the intentional negligence of women and their exclusion from political life and decision making in the after war Kosovo. Although the role of women before and after the war was crucial and supportive, UNMIK did not have the inclusion of women in their agenda. Moreover, as it was presented in this dissertation, the reports published by the CSOs have shown that the rights of women in Kosovo were entirely neglected, women were excluded from participation in any meetings, and the participation of women in politics was pushed to the bare minimum. The justification for the exclusion of women was that women in Kosovo are not interested in politics, as this is a patriarchal society. However, the U.N. administration was bound by the resolution 1325 that requires the inclusion of women in the post-conflict peacebuilding and other spheres economic, social, and cultural life. As for the property rights, after 1999, the situation with property rights and ownership was a huge challenge for both UNMIK and Kosovo population, due to the missing registry books and cadaster records. However, even during this time institutions applied discriminatory approach towards women, particularly in the cases when they supported the families of the war veterans and victims, institutions provided support for the brother of the victim, excluding the wife or sister, acting with a patriarchal logic of heirs in the family, which according to tradition, women are not part of it.

The aim of this dissertation has been all along trying to complete the bigger picture of the position of women in the society. The importance of this aim is based on the data and information that have been elaborated in this dissertation, Kosovo has had the first woman president in the Balkans, has a number of women who are great politicians, the Chief negotiator

in the talks between Kosovo and Serbia in Brussels was led by a woman, and recently the candidate for Prime minister in the last elections in Kosovo was woman, from the second largest political party. At first sight, this gives the idea that gender equality is on the right path. However, this dissertation has shown that women in Kosovo have political positions but no political power, they have leading positions, but their leadership is hindered by traditional constraints which influence on women losing their credibility in the population about their ability to perform because of their gender. A country that uses quota for women's participation in elections and political parties, as well as in public administration, but has never had one single woman more than that quota, in about 20 years since it was introduced as an affirmative measure for progressive realization of gender equality in Kosovo. The rates of reported domestic violence is increasing, however the concept of domestic violence and family abuse is still a foreign concept and hushed, women have beat men with education statistics, but this dissertation has presented that this has happened only with registration of women in the University but not quality education. Therefore, women in Kosovo are found in a situation where the law provides them with rights and freedoms, but the state does not open the doors for them to realize these rights. Moreover, these statistics show that patriarchal norms are so deeply rooted in the society that have taken over, except property and inheritance.

Overview of the Dissertation Structure:

This dissertation will be divided into five chapters. To achieve a full meaning, this dissertation needs to be classified into five chapters. The collection of data and compilation of this research is divided into the phases of the research as well as the chapters which they will reflect.

CHAPTER I – In this chapter I have presented the theoretical aspect of property rights, reflecting the theories of property, the meaning of property from the social contract to the first feminist wave where the right to property was considered the guardian of every other right, this way, is the foundation for women's right to vote and participation in economic social cultural and political life. The main goal of this chapter is to create the base for the further discussion on the importance of property and inheritance rights. How the feminist movements have managed to win rights for equal treatment of women, as well as reflecting that denial of women's rights to property is a denial of their right to life. The evolution of women's rights to property and inheritance which will lead to the development of women's participation in the decision making are the following subchapters which aim to show what will later be discussed, that without granting fundamental rights to women, granting just some of them in a particular

way, as it suits the patriarchal system, will not change the roots of discrimination in the society.

CHAPTER II as the following chapter, continues on the first chapter, providing a discussion on the international legal codification of women's rights, the need for codification of the Bill of Rights, and the role of respectability of women's rights in the international legal system. This chapter also aims to reflect on the need that the international system had to develop further the Convention on Elimination of All Forms of Discrimination Against Women, and its completion with additional protocols, conventions and legally binding documents, which also show that as the world started becoming more aware of women's rights and discrimination, as the new evidence revealed, new provisions needed to be added to the first convention, which still did not reflect especially the cultural relativism of the absolutism of human rights above culture-based discrimination such as child marriages, genital mutilations and other discriminatory practices which were forbidden in Istanbul Convention and additional protocols. This chapter establishes all the elements of international human rights law on women's rights to with a focus on property and inheritance and the emphasis on elimination of traditional elements that are discriminatory towards women in the societies around the world, which diminish the universality of human rights in the name of cultural relativism.

CHAPTER III – In this chapter, I present women's rights in Kosovo from a historical perspective until the establishment of the United Nations Interim Mission in Kosovo. In order to know how the exclusion of women from the right to property and inheritance influences the position of women in society, we first need to know what the current position of women in the society is and how did that image develop throughout history. Therefore, starting from the portraying of women in Albanian tradition and the foundation of the discriminatory mindset, the position of women in Kanun of Leke Dukagjini has been presented. Further, through the Former Yugoslav Federation and the rights of women in Kosovo during that time, followed by the war of 1999 in Kosovo and the use of rape as a tool of war against Kosovar women, it is important to know how vulnerability leads to victimization in a national context. The last part of this chapter, although after a war period, continues to describe the discrimination and exclusion of women from political and social life and negligence of women's affairs.

CHAPTER IV - This chapter writes about women's property and inheritance rights in Kosovo. Initially starting with property rights situation during UNMIK Administration, the situation and the issues around property and ownership that arose after 1999 is discussed, and situation that was created between women in Kosovo and UNMIK, due to their open negligence and refusal

to recognize or include women in political affairs and decision making. However, this is the phase where the first laws were adopted that regulated the rights of women to property and inheritance, which will lead to the legal framework of the Republic of Kosovo and the rights of women guaranteed by the Constitution and Laws in Kosovo. In this chapter, I have presented the role of the state and civil society on the protection of women's rights to property and inheritance, actions and shortages, progress and regress from the perspective of the government and CSOs in Kosovo as well as the work of Domestic and International CSOs in Kosovo on the rights of women to property and inheritance and their activities with the purpose of eliminating the influence of patriarchy in the society.

CHAPTER V - analyses the practices of exclusion of women from the right to property and inheritance. This chapter is comprised of the facts and arguments that are presented in four previous chapters, and the current situation in Kosovo, and practices that exclude women from the right to property and inheritance. This chapter presents data and statistics on indicators that have been published by existing researches that influence on the discrimination of women in the society in Kosovo, including the data and arguments from my research that provide an insight on how traditional patriarchal practices continue to discriminate women despite the changes and progress in other aspects. In this chapter, I have presented the stories received first-hand from women in Kosovo who have fought their legal battles to receive their rightful family inheritance. The narratives are provided with the purpose of showing the struggle that women in Kosovo have not only with the society and traditional stereotypes that lead towards their exclusion, but also the lack of support from institutions including the court procedures and ineffectivity of the judicial system in Kosovo which not only that it does not support women to realize their rights, but becomes an obstacle, further discouraging even the small percentage of women that decide to take the courage to fight patriarchy. These elements are provided with the purpose of showing the barriers that the state and society put to women, causing and influencing directly or indirectly their decision to give up the rights that are on their own benefit, and thus allowing patriarchal norms to prevail over the law and legal system.

In conclusion, I re-state that the answer to my research question is that the role of the state is crucial in changing the discriminatory practices against women in the society as well. Based on all the arguments that have been brought and analyzed in this dissertation, I consider that in Kosovo, the state has a crucial role in changing and preventing the exclusion of women from the right to property and inheritance. However, as for the society and their choice to remain in patriarchy, which I have considered that it is a state of choice and discrimination of women is

a choice, in this setting, the role of the state is crucial as well. The government of Kosovo can impose rules and regulations that would impose fines and consequences in the case of the application of discriminatory practices against women in the society and in case of excluding women from the right to inheritance and property. Therefore, culture not necessarily needs to remain static. It can serve as a set of values that present the identity of a nation and population, without the negative elements that influence the subordination of one of the genders, and which situation can be changed with proper laws and regulations in place. This crucial role of the state also has a negative effect, considering that there is also the fear that the state can legalize discriminatory practices against women, where patriarchy is instated in the form of laws.

Finally, I consider that this dissertation is of great benefit for academia in Kosovo and the region, particularly because the existing researches in Kosovo on the rights of women to property and inheritance are from the perspective of the law. Moreover, this dissertation can serve as a new approach and a new puzzle for civil society organizations and human rights activists, both local and international, state institutions, and other parties involved in the efforts of elimination of all forms of discrimination against women and eradication of patriarchal gender discriminatory norms.