



Unión Internacional del Notariado
Union Internationale du Notariat
International Union of Notaries



COMMISSION OF THE ENTITY NOTARY CHAMBERS
OF BOSNIA AND HERZEGOVINA



In Cooperation with:



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Third Regional Conference on Legal Security in the Western Balkans

LEGAL SECURITY, TO ENSURE GENDER EQUALITY in LAND TENURE 8th June 2018 – Sarajevo, Bosnia and Herzegovina

Under the auspices of the Ministry of Justice of Bosnia and Herzegovina

Organizer: Notary Chamber of the Federation of Bosnia and Herzegovina via Commission of the
Entity Notary Chambers of Bosnia and Herzegovina

Venue: Congress Hall -Holiday Hotel

Simultaneous translation in local languages, English, French and German

AGENDA

Welcoming: 8.30 – 9.00 am

09.00 am – 10.15 am - Opening session

- Notary Chamber of the Federation of Bosnia and Herzegovina – Mr. Zdenko PULJIĆ, President of the Management Board and Interim President
- Ministry of Justice of Bosnia and Herzegovina – Dr. Sc. Nezir PIVIĆ, Deputy Minister
- Commission of the Entity Notary Chambers of Bosnia and Herzegovina – Mg. Slada IVELIĆ, Chair of the Commission and President of the Notary Chamber of Republika Srpska
- *“The Fundamental Role of legal security in Land Titling”* - Mrs. Sigrun ERBER-FALLER, Vice-President for Europe, International Union of Notaries (UINL)
- *“Voluntary Guidelines on the Responsible Governance of Tenure”* - Mr. Vlado PIJUNOVIĆ, National Programme Coordinator, Food and Agriculture Organization of the United Nations (FAO) Bosnia and Herzegovina
- Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH - Mrs. Adela LLATJA, Project Manager, GIZ Albania

10.15 am – 11.00 am 1st topic: STATE OF THE ART: LAND ISSUES AND EQUALITY IN THE WESTERN BALKANS

Coordinator – Ms. Naomi KENNEY (FAO)

- ✓ *“Women & Land Rights”* – Mr. David SAUNDERS – UN Women Representative to Bosnia and Herzegovina

- ✓ *“The Present Situation: Barriers that Women Face in Land Ownership and Control”* – Mr. Fatmir LACEJ, Vice-President of the Albanian National Chamber of Notaries and Ms. Tanja ČEPIĆ, Notary of Montenegro
- ✓ *“Legal Security, Elements of Provision of the Right of Property and Gender Equality in the Republic of Macedonia”* – Mr. Zlatko NIKOLOVSKI, Notary, Notary Chamber of Republic of Macedonia
- ✓ *“Protection of the women’s right on immovable property in BH with a special focus on the role of notaries”* – Prof. Dr. Meliha POVLAČIĆ, Faculty of Law, University of Sarajevo

Coffee break

11.30 – 12.30 pm 2nd topic: ONGOING INITIATIVES AND STAKEHOLDER’S ROLE

COORDINATOR – Not. Đemaludin MUTAPČIĆ (Notary Chamber of the Federation of B&H)

- ✓ *“The role of Notaries and the Code of Ethics”*– Dr. Lovro TOMASIC, Notary - UINL and The Bundesnotarkammer
- ✓ *“UINL/FAO elaboration of general recommendations on the Voluntary Guidelines”* - Ms. Bianca WENGENMAYER - Notary Assessor, The Bundesnotarkammer
- ✓ *“Overview of the joint FAO/GIZ collaboration in the Western Balkans – Where we are at”*– Mrs. Adela LLATJA – GIZ Project Manager
- ✓ *“Presentation of the Gender Guidelines”* – Ms. Naomi KENNEY - FAO Legal Specialist

12.30-2.00 pm ROUND TABLE on the ONGOING INITIATIVES and the potential impact of the guidelines in the field: suggestions for improvements

COORDINATOR: Not. Lionel GALLIEZ (UINL)

Ms. Naomi KENNEY (FAO), Ms. Adela LLATJA (GIZ), Dr. Lovro TOMASIC, Notary (UINL), encounter representatives of civil society:

- ✓ Ms. Selma HADŽIHALILOVIĆ, CURE Foundation, Sarajevo
- ✓ Mrs. Aurela BOZO, Lawyer, Center for Legal Civic Initiatives, Albania
- ✓ Ms. Albora KACANI, National Federation of Communal Forests and Pastures of Albania, International Land Coalition

General discussion

2.00 – 2.15 pm CONCLUSIONS by Mr. Lionel GALLIEZ

2.15 pm – 2.30 pm - CLOSING SESSION

Not. Lionel GALLIEZ, UINL

SUMMARY

Third Regional Conference on Legal Security in the Western Balkans

LEGAL SECURITY, TO ENSURE GENDER EQUALITY in LAND TENURE

8th June 2018 – Sarajevo, Bosnia and Herzegovina

OPENING – Mr Zdenko PULJIĆ, President of the Management Board and Interim President, introduces the floor and welcomes the audience. Women represent the 50% of the Notary Federation and in our Board, out of 11 members, 7 are women. The importance of Women in this profession is great; a lot of progress were made in recent years. We are grateful to the Ministry of Justice, and I invite Mr Pivic to take the floor.

Mr Nezir PIVIĆ, Deputy Minister of Justice, this is the third regional conference on this issue and we have come a quite long way. The Ministry of Justice is honored to be here. Gender equality and tenure are crucial topics, and legal security is the key to the functioning of any legal system. Notaries are necessary to avoid long and costly legal disputes. We must ensure that women have equal rights. In our region, this is an issue, particularly in rural area. Family law provides equal rights but it is now important to take executive measures for the application of this legislation, we need public awareness and a fair access to justice.

Mg Slada IVELIĆ, Chair of the Commission and President of Notary Chamber of Republika Srpska. It is an honor to welcome you and we thank you for the attendance and contributions. Empowerment of girls and women is the crucial point, in the current situation we need to take into account customary law and tradition. The constitution guarantees equal rights in ownership in immovable property. However, in reality the owners of properties are mostly men. Gender inequality is also present in the perception of economic power in family resources. The right of inheritance is not equally enjoyed even if the constitution and the international law provide for this. Unfortunately, property are mostly registered only in the name of men and this creates disputes in inheritance issues. The legislator must ensure protection of rights of all parties. Notaries must ensure proper legislation applicable to each case and protect the rights of the most vulnerable party. Legal transactions must prevent possible future disputes.

Me Sigrun ERBER-FALLER, UINL Vice-President for Europe. Thank you to the Ministry of Justice and the Bosnia and Herzegovina Notary Chamber's president and members. Excellent cooperation between all of us ended into an excellent conference. UINL has 87 member countries. In civil law countries, there are preliminary consideration that can be taken into account so to avoid court disputes. The Union is very proud of the structure of the Notary in Bosnia and Herzegovina. It is a quality Notariat and we wish to support it in its evolution. Access to justice must be possible a part from court. We shall finalize contracts that can prevent future disputes. This is possible by making the necessary searches and investigations before the signature of a contract. It is our duty to protect the rights based on the Constitution, the right to make transactions, the protection of property, of family, and so on. We must protect these rights for both men and women. If on paper women do enjoy these rights, in reality they rarely do. We shall strive to reach an equal participation. If a person is legally present, then she cannot be excluded from contracts. In Germany, there was an addition to the Constitution, which now specify that the State must guarantee the equality of women and men in all field from economy, to property, inheritance, and the possibility of building a firm. Since that moment, it was much easier for us to protect the rights of women. All justice actors must protect the people with less economic power, which is often the case of women. The State must intervene and protect the economically disadvantaged party.

Often women do not ask the right questions, in these cases, the State must do everything necessary to make sure Notaries fulfil their obligation to listen to all concerned parties. If notaries do their job well, and clearly explain all the facts and not only authenticate documents, future disputes are unlikely to happen and women rights are respected.

The notarial procedure is therefore a necessary approach, and the State must do its part to guarantee this possibility. In many countries, there are obstacles and limits for women who want to acquire land. In Western Europe, we don't have this problem anymore, but in many other countries men and women do not enjoy the same rights for property, nor for inheritance. Women are often forced not to make use of their rights. It is therefore to the State to find solutions if someone's freedom is threatened. Notaries shall never make a transaction when the freedom of one party is not guaranteed. Women must decide by themselves if they want to give up a property or a right. It is up to the Notary to establish the relation between the spouses; and it is the Notary who shall strive to find a legal solution that can satisfy both of them. It is therefore always necessary to protect the weaker part in the procedure.

For what it concerns registrations of land properties, these must be registered in the land registry. If both parties are registered as co-owners, then both must participate in all decisions relating to that property. The woman will have to watch over the possibility that her husband will try to take advantage of a situation believing he is the only one to enjoy certain rights. Moreover, the Notaries must be careful with that.

If a woman is not registered as co-owner, then it becomes even more difficult. Thus, the Notary shall work very hard to ensure the protection of the rights of the weaker part. No Rule of Law is equal to another but we must find the best possible solutions for all parties in all States. We Notaries take particular pride in respecting women's rights.

Mr Zdenko PULJIĆ, since yesterday we have indeed some difficulties to guarantee that the Notariat can do its job.

Mr Vlado PIJUNOVIĆ, FAO National Coordinator, I just want to say that the objective of the Voluntary Guidelines is to support the progressive realization of rights for all parties. The FAO is very engaged in this and you can find the guidelines on the FAO website.

Ms Adela LLATJA, GIZ Project Manager, I represent here the GIZ, we are in the region since always (30 years in Macedonia, at least 20 in other areas), and since 2007 we work at regional level. This is a regional project. At the beginning, everyone was skeptic about this project but an Albanian notary decided to keep a diary of all the barriers encountered by women day by day in the practice. This diary became the basis of the guidelines we are presenting today. I am grateful to all here for sharing their experience and I thank the organizers.

Me Sigrun Erber-Faller gives the UINL medal to the **Deputy Minister of Justice**. The Deputy Minister thanks Me Erber-Faller and adds that he sincerely hopes that they will be able to support the notary function.

Session 1: STATE OF THE ART: LAND ISSUES AND EQUALITY IN THE WESTERN BALKANS

Moderator Naomi KENNEY, FAO Legal Specialist

Ms. Naomi KENNEY, thanks for all previous panelists because they were really to the point of why we're here today.

Mr. David SAUNDERS, UN Women Representative to BH, I must be one of the few people without a legal background today. It is a great pleasure to be here because land property is a crucial issue, critical to the security of families. I am very happy to see the UINL here because it proves that we are moving forward in supporting each one's work on these issues. Divisions of responsibility within families are still present, traditions, or rather habits, that establish that men inherit more than women do or own more than women own. Women often give up their portion of property to their brothers. In many cases, family opposes to a women owning an asset. Luckily, younger generations are more aware of their rights and challenge habits, share domestic work and work outside the house. Women can use land ownership to use it as an asset to build an enterprise and she invests in children education. Rural women face a much tougher situation. She has to care for the family, the sick, and the elderly. She finds it hard to have an income.

UN Women is pleased to join you on this issue of land tenure and equal ownership. Land means security, independence and freedom of choice. With 50% of women being abused within family, land means the possibility of walking away from that. Share titling of land is about justice. We have good laws and laws are in the interest of society. So why institution fail to insure these rights?

Me Tanja ČEPIĆ, Notary of Montenegro, thanks to everyone on behalf of Montenegro notaries. When it comes to property rights of women in Montenegro, property is one of the basic human rights. Normatively women enjoy the same rights than men in property, education, family planning, and labor. However, practice show us something else. There is still a strong influence of patriarchal relation and customary law. I am saying so not only for my personal experience (I used to be a lawyer), but also because of official statistics that show that patriarchal relations with unequal position of women and of access to justice is still widely present. This is true especially when it comes to inheritance. There are similar legal solutions in the region but I want to move away from the presentation I had prepared, and cite cases that I see in my work. UINL Vice President told us how Notaries should act to protect women rights. I think most of Notaries apply these principles, our deontology says that we must find the best solution for all parties. Nevertheless, I know that we must also assess the will of the party and best advice on possible options. A notary must investigate on how a man acquired a property, in case a wife also contributed to this acquisition. In Montenegro, despite our education and the perspective of EU adherence, we are shocked to see that a man may want to have only his son inheriting the whole family patrimony. It is difficult because that is a clear will, even if unexpected from an educated person.

In history, the main task of women was to give birth to a soldier. Still today, when a boy child is born there are fire guns and explosions to celebrate the birth. As Notaries, we can see five heirs, one male and 4 women, and assist to all the sisters giving up their rights in favor of the brother. This is tradition and despite all we can do, all the advices, and the work in the best interest of everyone, we are often powerless when facing such strong traditions and customs.

It is also true than in Montenegro husbands usually protect the women, so women sacrifice for men but they never feel humiliated doing it. Montenegro women and sisters never display emotions when losing a husband, but when they lose a brother, they mourn him publicly. I am saying all of this as this is the historic background that leads to today deeply rooted values in society.

In Montenegro, the first house is practically always in the name of the male. Spouses are registered only in second houses and usually it is so just in order to pay fewer taxes.

Ms. Naomi KENNEY, there isn't an evil will on the side of males, customary habits have reasons, it is our duty to understand all of this and try to find best solutions.

Mr. Fatmir LACEJ, Vice-President of Albanian Notary Chamber, we evaluated so much this conference and I think Albania has a great representation today. The issue is sensitive, human rights and gender equality and we are the best actors that can deal with it. We are in a privileged position to become agent of change and fighters for social peace. In Albania, the first law on land property dates 1991, as before there was no property. It is since 2012 that we have a law saying that men and women should be registered in co property. However, there are violations of women rights. There is a lack of provision and clarification, there is lack of awareness of women rights, and there is a lack of training among legal professionals. There are problems linked to property, a culture of despising property, and domestic violence. The head of households in Albania is the man. All the organizations are working together for gender equality but still in rural areas, we have 70% registration of land in the name of only men. Therefore, there is no equality.

Therefore, we are here as public servants that have done an oath to work with diligence and to protect the human rights of everybody. So what can we do better? Much more. First, we must become gender sensitive, aware and conscious and be so in all of our notarial offices. We need to adapt gender sensitive guidelines. These guidelines are great work, which we can ameliorate working all together. We need to standardize procedures for Notaries. In Albania, we work for this and GIZ has the flag on it. All projects focus now on gender equality, and Notaries can make a huge difference. Together we can do much more and I hope that in Albania, Academia, Int'l org and Notaries will be able to draft better procedures, to better work with our government, and to achieve our objective.

Prof. Meliha POVLAČIĆ, Faculty of Law, university of Sarajevo, we are here presenting the situation in the Balkans. We hope that the situation will not change despite the recent news.

Two years ago, GIZ came to me with the project and I thought there was no purpose to it as men and women have legally equal rights, in BH we are signatory of all int'l treaties. No law has discrimination in it. Then we realized that we were not right. We analyzed the following data: BH has 48% of men and 62% women in the population. However, property is owned by 51% of men and 37% of women; and these numbers, there is no specification of the difference between urban and rural areas.

Nevertheless, there is not only traditions but also norms that generate discrimination. We did find these norms potentially discriminatory for both men and women but especially for the economically disadvantaged, which is usually the female. Disputes are usually generated before the parties go to the Notary. According to legislation, notaries are involved in all transactions. Notaries must know all the data, not only the ones given by a one party. – **SEE PRESENTATION.** Role of Notaries and Legal reform

Mr. Zlatko NIKOLOVSKI, Notary of Macedonia, thank you and very good morning to all. After the presentations from my colleagues from BH, Montenegro and Albania, my presentation on Macedonia will complete the picture of the situation in the Balkans on property rights and gender equality. There are certainly traditions that are similar in the regions. My report will be a lot less emotional than Tanja's but it may as well be useful. The Constitution in Macedonia guarantees legal protection of properties and inheritance with no discrimination. The legal basis to acquire a property is that it has to be registered in the cadaster; it also has to be certified by a Notary. For these issues all people are equal before the law in Macedonia. All properties acquired during marriage are joint properties and have to be registered on both names. If only one name is given, the legal presumption is that both anyway own it.

Citizen file for proceeding with the basic court, which then nominates Notaries to deal with it. Gender equality is guaranteed under the law and is a fundamental principle in the Constitution.

Macedonia has adopted special laws for equal opportunities in political, economic, social and educational terms. There is also a National Strategy for Gender Equality that was adopted by the Parliament.

Even though all of this, women very often do not inherit the property as they voluntarily give up their part of the property because of mentality and traditions. This leads us to understand that the influence of traditions is still very strong. Men consider themselves responsible for the family and therefore they believe they should inherit the house, the land, the machinery. Women indirectly support and perpetuate the patriarchal regimes; they seem not to care about improving their economic situation. Religion and ethnicity are also important factors, Muslim families in most cases transfer property in male line and women are not expected to contribute to the family property and are deprived of any rights on it. Women are not stimulated to question this and therefore they end up supporting this tradition.

In practice, there are many challenges in the customary traditional way of life. Discriminatory practices can only be changed by improving the presence of women in decision-making processes.

In this survey, the 68% of respondent say their property was registered on the husband or father name only. Women appear not to have access to property in the original family nor in the one acquired through marriage, therefore they never have economic means. The presumption that women in Macedonia do not make use of their rights in inheritance is true. The **87%** of the respondents of this survey has not inherited any property from their family of origin. It should be noted that 85% of Albanian and 85% of Macedonian do not inherit. Ethnicity was also considered in some studies, but in the *Polog* region, the great variation of ethnicity does not play any role. The 45% of the respondent said they did not inherit because it is not what is traditionally done. Some answered they were afraid to disrupt the family situation; others than they did not need to own the property as their husbands managed it well.

This study was made to understand the attitude of women toward this issue. Women generally said that if they inherit or claim inheritance it would have a negative effect on the family relations.

Based on this research, I say that Macedonia has a good legal framework on gender equality. However, there is a big gap between law and reality. We need to reduce conflicts between customs and laws by conducting deep research in areas where customary and cultural codes have a very negative impact on women rights. The participation of women and men in these workshops is crucial. First, we need to listen to women, establish solutions, and then educate the men.

Session 2: ONGOING INITIATIVES AND STAKEHOLDER'S ROLE

Moderator Not. Demaludin MUTAPČIĆ

Dr Lovro TOMASIC, Notary, thanks colleagues. I am so happy to be in Sarajevo again. We really hope the Notariat will stay in the form that has been and never go backwards.

Gender inequality is indeed an issue that we need to combat as we have heard up to now. The Balkans are a region where deeply traditional rooted inequalities are present, but it is also a region where women have a great role in many qualified professions, and this since the end of WWII. The 50% of civil servants here are women, which is more than in Germany. Change is indeed on the way (it would be enough to look at Tanja's strength). The Balkan show us that much progress has been made.

The notaries are taking this issue very seriously. There are three levels in gender inequality; first, it can be present in the law, which is not the case in the Balkans. Then inequality can be seen before the law, and in the Balkan, this is not true either. However, the inequality of application of the law is indeed a problem in this region. Women often do not make use of their rights. To address this we

need to find incentives, procedures to make sure that women ask for their rights. To foster this environment of change we need formalized procedures, because only with those the most vulnerable parts will actually understand their choices. Formalities are often criticized, but formalized procedures are essential to achieve protection of rights in the administration of justice.

Notaries have an essential role to prevent court disputes, as registration do as well. In order to protect women right it is important that they appear in the registers, because if they are, then it is much more difficult to exclude them. Therefore, they must be registered but we also need to control how they are registered, what advice they receive. Notaries are crucial in advising what registration is best applicable, and in authenticating the documents. In Common Law regimes, registrations are never verified; the documents sent to obtain the registration are not verified. However, this becomes a meaningless procedure. Before a Notary, the exactitude of information is essential. The Notary shall always verify the correctness of the information received. Notary makes all the parts of the contract transparent and advises the parties, because only informed decisions prevent litigations. Often a couple cannot consult more than one legal advisor for economic reasons and access reasons, notary are therefore the right choice as they are impartial and will strive to protect the rights of all the parties.

It is proven that legal costs are much lower in systems that rely on notaries than in systems that do not. So all the social purposes for which Notaries work come also at lower prices.

In order to perform all of their functions, notaries must be part of an organization and respect a code of ethics, which is part of their deontology. This shows the main requirements for the profession. First rule in it is to reject all kind of illegal behaviors; and do not allow stronger party to overwhelm the weaker party in a contrast. The notary is under public supervision, the respect of the code is done not only by the clients but also by the State. The notary is independent, reliable and impartial, but also accessible through economic incentives. The Notary has to work at the highest standards, therefore must have very high qualifications and continuing education. The Notary is personally responsible if he breaches his duty.

The code of ethics is essential to all notarial activity; and this is why the work of Notaries is essential in order to prevent disputes. Therefore, the Notariats are essential for land tenure and protection of rights.

The Law means to answer with justice to citizen seeking for it. Technical systems cannot replace the deontology and ethics of Notaries.

It will now be essential that the UINL and all Notariats work together with FAO and GIZ to finalize the voluntary guidelines.

Ms Bianca WENGENMAYER, Notary Assessor, I sincerely thank the previous speakers for their examples and statistics. I would like to speak about the voluntary guidelines. I have been working on gender equality a lot. The drafting of the guidelines for notaries, which are based on the voluntary guidelines, is a work of love. These guidelines are meant to improve responsible governance of tenure in order to achieve food security for the global population. The objective is to help the achievements of FAO goals. The importance of a stable legal basis must not be underestimated because Notariats are crucial to implement the guidelines. Notaries are also legal experts and there was a need to draft separately the guidelines, which provide the basis for longtime food security. As notaries, we are required to be impartial and this is important to take into account. We are public servants and in rural areas, the population must have equal access to notary services. Therefore, notaries are often the first point of contact in places that are isolated. Notaries have to advise in the best interest of the client. Impartiality entangle that Notaries have to protect the weaker part.

The guidelines have a wide scope and can be applied in any legal system because they are based on international standards. Every legal expert should make use of the universalism and UINL has the code of ethics for notaries. The guideline for Notaries are intended for Chambers but also for individual notaries as change always starts at the grassroots. As Notaries we are responsible and in UINL we are aware of this responsibility and this is why we want to cooperate with FAO and GIZ. The guidelines are a tool useful in the everyday work of Notary, public register, Lawyers. Preventive law must be used as a mean to achieve food security and notary are crucial for preventive law.

Ms Adela LLATJA, GIZ and FAO are collaborating since a time in this region. We started with an event in Albania, during which we have tried to identify needs. We found that everywhere in the region gender was an issue. Therefore, we realized that data were showing a different picture than the legal framework.

At the same time, we received the development goals, in which the gender issue is set as a priority; and we realized that the Notaries played a key role in the registration of property.

Therefore, we started our project that gathered FAO tools, the notaries, the Goals. We started by listening to needs in various places of the region and then we went back home to make legal changes. We then appointed a group of experts one from BH, one from Albania, one from Serbia, and one from Macedonia, led by Naomi Kenney of FAO.

We came out with the draft of these guidelines. Notaries shall read and validate them and all shall add their comments. We tried to bring together Notaries, Ministries of Justice and registration offices.

Ms Naomi KENNEY, thanks to all the speakers, particularly Adela for our happy marriage! Notaries can be the agents of change. *De facto* as opposed to *de iuri* as there are rarely inequalities in the legal framework, while there are in the practice. FAO legal office works on any legal issue related to FAO goals, so particularly on land. We also do research and support implementation of int'l instruments and do capacity development.

We have produced the voluntary technical guidelines for Notaries and lawyers in 2016, which looks at how legal service providers can be mobilized for equitable land tenure and there is advice on how to perform a legal assessment.

Responsible governance of land means equal treatment of people before the law, it is key to preventive justice, and it is about simplifying tenure administration.

We came to realize that we needed to work with actors of law implementation and this led us to the present work. The general recommendation adopted by the UN says clearly that to rely only on male inheritance and ownership is indeed discriminatory. This recommendation was adopted in 1994. This tells us that we must make progress, since it has not been made so far.

Notaries are fundamental in this process. Share good practices and case studies and legal reforms and strategies, this is what we need to progress. Chambers of Notaries can participate a great deal to this. Due diligence in notarial services is a safeguard to avoid risk and reputational damages, so it is a win-win situation.

In FAO, we also developed voluntary guidelines on gender equality. We mean that Notary provide info on the client demand but he can also anticipate possible dispute and provide protection for the weaker side. Notaries shall anticipate difficult questions in appropriate timing.

The rationale for the guidelines is that many countries have adopted legal framework that go a long way to strengthen women rights. However, in practice property registration is overwhelming in the name of males. Therefore, there is a huge gap between law and practice. Here in the Balkans you go to Notaries for property and inheritance. There is a strong need for Notaries to make an extra step to

make sure the rights of all parties are protected because they are in the privileged position to accelerate gender equality.

We developed the guidelines on two pillars, due diligence and cooperation/self learning. This intends to strengthen gender equality in practice.

There is a range of risks for women and daughters so the idea is to use personal safety as a benchmark. When a man is selling a property, the process must be to think immediately of the consequences and risks for the wife (access to financial instruments etc), so Notaries must be sure to address these risks when they make the transaction. Therefore, there is a crucial need of a certain number of documents that have to be required before finalizing the transaction. This is true for married couple, non-married couples and daughters. We established the right questions to ask to the parties and each question comes with a checklist to make sure we are getting all the info we need.

There is a huge role of the Notary Chamber by including information on gender equality issues in the regular review of their work. The consultations that Notaries do with colleagues is fundamental as well, it is not an isolated profession, sharing practices and experiences is crucial. The role of network with other professions is also essential, academia, lawyers, judges. We should all make it a habit to share our experiences with everybody.

The guidelines are not finalized; we look forward to your comments in order to do so.

Round Table: ONGOING INITIATIVES AND THE POTENTIAL IMPACT OF THE GUIDELINES IN THE FIELD: SUGGESTIONS FOR IMPROVEMENTS

Moderator Not. Lionel GALLIEZ, UINL Councilor

Mr Lionel GALLIEZ, we are now going to cover the potential impact of the guidelines in the field.

Ms Selma HADŽIHALILOVIĆ, CURE Foundation, Sarajevo, I am a feminist and a social justice activist and with the Cure foundation we work on women rights and women networks. I hope that my short intervention will contribute to our common effort to improve gender equality in land tenure. This is also a learning experience for me and I hope to keep in contact with a lot of you. I am part of the shadow report on the SIDA convention that Naomi talked before. I have worked across BH to assess situations. To start, I would like to suggest adding to the guidelines marginalized groups of women, like single parents, women with disabilities, mothers of children with disabilities.

I am saying this because not a single policy sees me as a target. Not one policy speaks about women social rights and inclusion, not a text of the law. There are people who never have a voice. I have a paraplegic friend who bought a flat but on the door there is her father name, the contract is on her father name. If an educated woman does not enjoy her own right because of her disability, then how an uneducated woman will be able to? The gender sensitive language is essential as if we are not visible we are not implied, we have to find a way to teach others to use the right language. In the guidelines, in the networking part we need to include cultural mediation to include relevant information on particular groups.

Mr Lionel GALLIEZ: These are the disturbing facts from the ground that we need to hear in order to further the work.

Mr Lovro TOMASIC: Thanks Selma for illustrating real lives difficulties. We notaries must understand that we are the institution who shall protect the rights. If citizen approach us with trust we must justify this trust especially for the most vulnerable ones. We have to be very sensitive to the needs of the most vulnerable clients. It is also essential to introduce a minimal level of legal knowledge. Here notaries have a role to play. Many think that voices are implicit, but is our duty as

notary to write down everything, never think that there are implicit things because there are not, we have to explicitly say everything.

Ms Aurela BOZO, Center for Legal Civic Initiatives, Albania, I would like to share the experience of CLCI in Albania, which is an organization that provides services for discriminated groups. We work for women, with the support of many UN agencies, for property ownership. We are a group of lawyers in this organization who identify problems and provide free legal aid. We have also a very good group of experts who are engaged in all activities of our center. We are strongly focused in using international standards. We have worked a lot to strengthen the institutional response, training for notaries and registration offices. Moreover, we work on increasing access to legal information and on community awareness.

Legal Aid: In 2017, there are 150 women who received counseling and 20 were represented in court by us. The Notaries were the best for referring cases to us so it has clearly increased their awareness.

There is a small request of help for property and a lot more for separation, the highest number of requests for the property division comes from wives.

We now have a draft guide to regulate property. It is drafted but not yet approved but it is a step forward from Thessaloniki. I am very happy of the presence of people from the Ministry of Justice today because they will now understand the importance of these issues and therefore accelerate the approval of the guide.

Mr Lionel GALLIEZ: changing practice and procedure can help more than changing law for gender equality improvement.

Ms Adela LLATJA, only 1% of women go to the end of a court process, so this is the role of notaries, to prevent going to court and protect the rights of women from the beginning.

How can we improve the cooperation between civil society and chamber of notaries?

Ms Naomi KENNEY: we have to look at all enablers tools.

Mr Lovro TOMASIC: due diligence can help because it is the duty of the notary to establish what registration is needed for each case. If a Notary does not ask about the spouse, he is breaching the law or ignoring it, in any case you breach your duty, which can lead to liability damage. This needs to be supervised. The Notary MUST have the responsibility of the CONTENT of the notarial act. If the notary is not responsible because others draft the content, then there is no liability.

Ms Albora KACANI, National federation of Community Forests and Pastures of Albania, it is indeed very useful to exchange knowledge on the legal perspective. In Albania, the agriculture sector employs more than 50% women in labor, and their salary is hugely lower than men; moreover, women are almost never in director positions. In rural area is worse.

Our action plan have not enough financial means to be seriously implemented.

During the distribution of land in 1991, the land was given to families with no gender distinction, only the head of household would appear in the registration though. In the rural areas, is even more difficult to find a women registering ownership of land. According to the law, the wives have half of the property but in reality, women do not claim their rights. For widows there are even additional difficulties as property can go to their son but also to the man's original family.

We have good laws but implementation is not happening, there is a difference between legal property rights and what happens on the ground. Women tend to accept or tolerate customary measures. There is also lack of knowledge sometimes from legal practitioners on rights of women.

Women are now present in boards of Forestry even if they do not reach half of it.

My recommendation is to listen to all family members and clarify the relevant legal framework. Notaries should have better access to registration offices. Forestry legislation should guarantee women participation.

QUESTIONS FROM THE AUDIENCE

- Thinking about the notary responsibility, which is not only legal but also social, so notary should not only have a legal license but also a social agreement/approval. It is a joke to say that the legal role is not enough for notaries. The social engagement is as well important.
- What are going to be the concrete steps with our governments?

Mr Lovro TOMASIC, I do not have the authority to answer for all, Naomi, I think that building this relationship is helping us to learn. Key issues needed to be tackled at the regional level and we did with these meetings. Nevertheless, we have a goal and the goal was also to issue the practical guidelines so that we can achieve a result at the individual level but also at a broader level. FAO works with countries at the request of countries and if governments are interested, they can ask and we can develop cooperation projects.

- In Montenegro, the Supreme Court established that only in case of the death of owner could the wife inherit. However, any property earned with a company cannot belong also to the wife. We had many litigations, notaries always need both parties consent but there were litigations because the husband would do a mortgage without the wife consent.

Mr. Lionel GALLIEZ (UINL), CONCLUSIONS and CLOSING

Thank you to all panellists.

At the time of conclusions, it is rightful to ask the simplest question, why have we gathered?

I know now that we all share the same goal of achieving equal rights for men and women. A fundamental right is the one to own properties, and it is not enough to say so in books, we need to see it implemented in facts. The real justice, the Rule of Law, means real equality, co-ownership of property and land by couples, daughters inheriting equal parts than their brothers, procedures that allow fixing a wrongdoing quickly, simply, and at a reasonable cost.

This is of interest for Notaries as it is their job and the fields they cover include marriage contracts, land titling, and inheritance. Notaries have a direct contact with citizens, with their problems and believe in their social goal: the legal security, which means prevention of conflicts, which in turn means being able to clearly explain opportunities and risks, foresee problems before they happen, finally, it means explaining the law.

Notaries have a legal background, which is necessary but could sometimes provide a vision limited to formal aspects. The existence of texts that guarantee equality, does not guarantee the existence of equality, but only the appearances of equality. If we cannot see the reality then we are part of the problem, it is by dissipating this illusion that we become part of the solution.

At the UINL, we believe in our role of guarantor of law and equality. Partnership with International Organisations have exactly this goal, to work on a problem that is so wide, as gender inequality is,

which an individual notary could not tackle efficiently. This is why cooperation is necessary, to find wide, sustainable solutions beyond the individual level.

Individually, notaries do have a task to accomplish, which is to carry out their job with sensitiveness and pedagogy, with a strong sense of justice and of equity. A Notary has therefore a fundamental role to implement an effective equality. However, in order to go beyond the individual dimension, notaries shall find the means to effectively cooperate with International Organizations and Development Agencies such as FAO and GIZ.

A good cooperation between us could be summarized as:

- To learn from our partners
- To teach to our partners
- To act along with our partners to achieve concrete goals.

To learn from our partners means to get away from a strictly legal point of view and this shows us the importance of the Voluntary Guidelines. It entangles to take an interest in field assessments, in studies and researches in order to improve our knowledge and our understanding of the problem; which is necessary to be able to thoroughly analyse the risks. We can also learn the participatory character of the work, which entails to encourage the participation of those who suffer the inequality to reach a solution. We can discover new methods to better our practices, such as participate in workshops; share our knowledge of traditions and problems in different regions; draft practical technical guidelines; and find means to measure concrete progress.

We can also share with our partners our knowledge of the law, particularly in practical cases. We can also share our first-hand knowledge of gender inequality problems with which we deal very often in our cabinets. Finally, we can share our expertise in finding solutions and practices that improve the equality of men and women. In order to share all of this we need to be interested in partnership and to establish regular encounters with workshops and with shared studies.

To act together means to learn lessons so to improve practices, to establish codes of conduct, ethical codes, deontology and specific rules for Gender issues. It means to issue practical and technical guidelines. Finally, it means to become a creative force to produce advancements in law, in regulation, and in the administrative organization of land titling. Contributions from all participants allow clearing the road ahead.

We want to pursue the goal of gender equality with determination. We want to identify what notaries can do in their relations with clients. To improve our practices, improve our risk assessments and improve our due diligence we need to inform thoroughly women, couples, and families so to prevent or fix inequalities. To inform may not seem enough but it is certainly more difficult to ignore a fact when it was explained in detail.

Together with International Organisations and GIZ, we can influence authorities through studies, strategies and communication actions so to improve texts, procedures and practices. This involves not only the administrative reorganisation of land or marriage registers, but also, and especially a true sensitisation work; since, as we have seen today, most of the difficulties rely upon mentalities; and it is therefore a long term, tireless work.

I would like to thank now the Notary Chamber of Bosnia and Herzegovina, the President and all the organisers, particularly Ms Hejdi Petrovic for their excellent job. I want to thank the Notariats of the federation, of the Western Balkans' region and of Germany for their plentiful participation and for their deep understanding of the importance if this cooperation.

I also would like to sincerely thank our partners FAO and GIZ because they are helping notaries to enrich their vision and to improve their practices.

I wish to thank the Academia, and particularly Professor Povlakic, for their analysis and for the training and education they provide to the Notariat.

Finally, I would like to thank the interpreters.

I would like to end this Conference with wishes more than with thank you notes.

In particular, I wish to the Federation Notaries that the situation will improve and I hope the Ministry of Justice will fully realize the meaningfulness of this Conference; and I wish other Notariats to be able to convince governments of their fundamental function.

In general, I wish that our collaboration with FAO and GIZ will continue and I hope we will not only achieve our goals in this region but also beyond, in other regions of the world and covering other themes.

Thank you for the participation, the attention, the will to progress in equality between men and women.

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