

# **Palestinian Women and Inheritance**

## **Summary**

## Introduction

Inheritance is an internationally recognised concept. It is enshrined in most, if not all, national laws and international conventions. Inheritance is particularly significant as it bolsters kinship ties between heirs and estate holders, consolidates respect of private property, and promotes investment and production activity.

In Palestine, the Islamic system of inheritance applies to both Muslims and non-Muslims. Ecclesiastical courts lack an inheritance system of their own. However, Christian denominations are not legally bound to use the Islamic law of inheritance, where women receive different shares of inheritance in line with their legal characterisation and status.

According to the Islamic Law (*Sharia*), inheritance is limited to property. The marriage bond and lineage are causes of inheritance. There is no difference in the rights of inheritance between descendant heirs on grounds of maturity or age. A man and a woman are equally entitled to inheritance when they both share a relationship with the deceased. In some cases, women are treated equally to men in regards to the laws of inheritance. In other cases, a woman inherits, but the man who shares kinship with the deceased does not. In shares of inheritance, women are sometimes given more weight than corresponding men.

Like other legally prescribed rights of women, the right of inheritance is practically restricted by rights endowed by societal norms to women as well as by constraints posed by social customs and traditions on women's right to claim their inheritance rights and share of the deceased's estate. The right of inheritance is associated with, and changes according to a set of variables. In addition to the location and nature of immovable properties, these variables include the woman's degree of relationship with the deceased, marital status, being an agnate relative by the presence of a certain other relative, or exclusion from inheritance. Personal qualities distinguish female heirs from other inheritors, including audacity to claim the right of inheritance. Male heirs may be greedy and unwilling to grant women their inheritance rights. Hence, women may be totally deprived of their legally enshrined right of inheritance. In some cases, women may receive a portion of their share of inheritance. Women's claim of their right of inheritance may result in a breakoff of relations with their families. It might be a cause of physical assault or even murder of these women.

Women are deprived of their right of inheritance. With the intention of excluding them from inheritance after his death, the proprietor (estate holder) distributes his wealth in his lifetime to male children only by means of a bequest, transfer of ownership (by way of a simulated sale), or possession of the estate by some male heirs (most often by the eldest son). Estate documents may be forged. A claim that an extra portion is bequeathed for some heirs may be invoked. After her husband dies, a wife may be deprived of her right to dower, which would be considered as a portion of the estate. Heirs may threaten a woman to waive her portion of the estate by persuading her to abandon her share by either shaming or

intimidating her if she claims her right of inheritance. A mediocre estate may be a reason for dispossessing women of their share of inheritance. Women may also be stripped of inheritance due to certain norms, customs and traditions.

### **Significance and objectives of the research paper**

The Women's Centre for Legal Aid and Counselling (WCLAC) has developed this research paper in line with its goal of promoting empowerment and protection of women against violence. WCLAC works towards enhancing women's enjoyment of their rights, ensuring equitable participation in society side by side with men, and eliminating discrimination that prevents women's access to justice. Ensuring that women maintain the right of inheritance contributes to the economic empowerment of women, promoting their status and reducing incidence of economic and social violence. Access to the right of inheritance also contributes to boosting political-economic development of women in Palestine, putting the Palestinian society on the right track towards sustainable development and ensuring women's full participation in community. This research paper casts light on and presents the deprivation of women of their right of inheritance as a social problem. It unveils direct and indirect causes of women's dispossession of inheritance and investigates the most prominent techniques of deception used by male heirs to exclude women from heredity. These techniques mostly lie in details of procedures and regulations applied by relevant agencies. The paper identifies persons who bar women from their inheritance, bodies that support women's claim of inheritance, and social, economic and legal challenges to Palestinian women's access to inheritance rights. It further explores consequences of the deprivation of women of their inheritance. From the women's perspective, the research paper proposes key intervention mechanisms needed to facilitate Palestinian women's access to inheritance and to minimise challenges women face when they access their inheritance rights, including lengthy process of litigation and high court fees. An enhancement of these conditions will ultimately promote women's economic status and reduce routine procedures relating to inheritance and devolution of property.

The research paper assesses the extent to which Palestinian women enjoy the right of inheritance. Inheritance is not significant only as a right prescribed by Islamic Law and safeguarded by domestic legislation and international conventions, but also as a method for the distribution of wealth among generations and a means for economic empowerment of heirs. Accordingly, the demand to enforce women's right of inheritance ensures that women's immediate material needs are delivered and that women maintain their rights. Moreover, inheritance helps reshape asymmetrical power relations between men and women. There is an essential, correlative link between violence and discrimination against women and opportunities furnished to deprive women of the right of inheritance, title to property, and other rights by means of intimidation, deception, or pressure. As provided by law and in practice, inheritance reflects the nature of society and state. Insofar as women are

concerned, inheritance mirrors respect of women's role and rights in society and state. Progress of countries is measured by a set of indicators, including empowerment of women and gender equality. Development of modern states is premised on safeguarded citizenship rights of all women on an equal footing with men. It also derives from good governance and sustainable development of both male and female citizens. Political, economic and social marginalisation excludes women from civil and political life. It constrains women's right to education and employment and impedes their economic independence.

## **Research methodology**

Informed by a descriptive, analytical approach, the research paper analyses the legal and procedural framework for Palestinian women's access to the right of inheritance. It provides a complete picture of Palestinian women's inheritance, including in relation to motives to claim or abandon the right of inheritance, methods of pressure or surreptitious practices used to disinherit women, and social and legal impediments to accessing inheritance rights.

The paper includes a review of relevant studies, treatises, and working papers. It also provides an overview of reports and studies published by Arab and other legal institutions. The paper is informed by structured interviews as a tool of qualitative research with a view to access more accurate information and explanations. To this avail, the research team contacted and organised separate meetings with relevant organisations to facilitate access to needed information. Meetings were held with representatives of the Palestinian Land Authority (PLA), High Judicial Council (HJC), and High Council of Family Courts in Ramallah, as well as with staff of Governor Offices in Ramallah, Bethlehem, Hebron, Jericho, Nablus, Jenin, Salfit, Tulkarem, Jenin, Qalqiliya, and Tubas.

A research survey was designed, targeting women who attempted to receive their right of inheritance. Another research survey targeted women who waived their inheritance rights. Surveys were tailored to explore women's opinions and trends to receive inheritance. To answer some inquiries relating to the analysis of survey results, three focus groups were organised, bringing together women who abandoned and/or claimed their inheritance rights in Ramallah, Hebron, and Nablus. Due to current political circumstances, however, the research team could not hold any focus groups in the Gaza Strip.

The research survey sample covered a total of 306 women, who claimed or relinquished their right of inheritance. The survey sample was based on geographical distribution and sample characteristics. The Palestinian territory was divided into the Gaza governorates and northern, central and southern West Bank governorates. The second sample criterion included the following specifications: women who claimed their right of inheritance, and women who waived their right of inheritance. The timeframe of the research paper was set from early 2010 towards late 2013. To access the target group, nine field researchers visited women at the addresses received from partner organisations and WCLAC branch offices in

relevant geographical localities and in line with available resources. Research survey data was collected over the period from 25 March to 30 April 2014.

## Conclusions

- Palestinian legislation recognises women's unrestricted right to ownership. A woman does not have to obtain her husband's or guardian's approval to acquire her property. Palestinian regulations on inheritance are grounded in Islamic Law. Accordingly, heirs and heirs' shares are identified. The Palestinian law also allows shares of inheritance to be sold among heirs and waived from one heir to another in consideration of a certain financial reimbursement or price to be agreed between them. This is commonly known as *Takharuj* - a compromise among the inheritors for a sum of money.
- Women encounter social challenges resulting from the prevalent patriarchal culture in the Palestinian society. A common view of shame and abashment prevents women from claiming their right of inheritance, forcing them to abandon their inheritance shares in most instances. Women fear that their families will break off relations with or physically assault them. Women also face legal challenges. Explicit legal provisions are lacking so as to incriminate fraudulent practices or intimidation used to disinherit women. Legal deterrence is absent by a lack of severe penalties against men who deprive women of inheritance. Relevant legal provisions do not ensure women's access to their right of inheritance by force of the law. Finally, women are challenged by judicial and procedural challenges, including lengthy court procedures in inheritance cases. Complicated legal procedures take a long time to list the deceased's estate and distribute inherited properties, shares and land between heirs. Also, women cannot afford high court fees, forcing many to abandon their right of inheritance and avoid this unduly complex and thorny process.
- Owing to the love of their brothers, bashfulness, and a culture of shame in which they have been brought up, the majority of women claim their right of inheritance more than ten years after the estate holder's death. After this period, women demand their right of inheritance due to family alienation, a growing recognition and intolerance of injustice, use of deception by brothers, denial of women's rights, and attempts to assail them so that they abandon their right of inheritance. The fact that women claim their right is an inevitable consequence of the loss of fraternal protection and support they have used to anticipate. The value of the estate is much higher years after death of the estate holder. A woman may lack a supporter in light of deteriorating economic conditions. This is particularly the case when a woman's economic status is worse than her family's.
- Most applicants for certification of succession are males who tend to take the initiative to apply for a certificate of succession more so than women. In the

Palestinian patriarchal society, mainly men apply for and pursue certificates of succession at relevant courts and official departments. Men consider themselves as the direct beneficiaries of inheritance. Sometimes, heirs manage to exclude others from certificates of succession. Lengthy, complicated legal procedures and exorbitant court fees, which women cannot afford, pose further restrictions, obstructing women's access to courts. In addition, some women are unaware of their family or legal rights. They are further constrained by the common social culture of shame.

- Thanks to the Circular on *Takharuj*, *Takharuj* transactions registered a remarkable decrease over 2012 and 2013. Female heirs, for the benefit of male heirs, file the majority of *Takharuj* applications at Palestinian courts. However, most women, who waived their right of inheritance, do not know what *Takharuj* means, nor do they realise its consequences. In the majority of cases, *Takharuj* was requested by brother(s). Most women, who consented to *Takharuj*, regretted it because they had compromised their shares of inheritance. They would have preferred to have received their portions in line with their legally prescribed shares.
- Motives to claim the right of inheritance have varied. Providing that inheritance is a legal, executory right, the legal motive is the most significant that urges women to claim their rights. Women's declining economic situation also drives them to claim their right of inheritance, particularly in cases where their families' economic status is prosperous.
- Most commonly, women request assistance from informal justice providers, elder brothers, and legal organisations to access their right of inheritance. However, the majority of women have not received necessary support from the bodies they resorted to. Some informal justice providers have even challenged these women, believing they do not have the right to claim their inheritance rights. Strangely, some of these figures are considered as "religious scholars" by the society.
- A few women claimed their inheritance rights thanks to institutions that launched public campaigns, raising women's awareness of their rights. However, a decreasing number of women have sought assistance from legal organisations as women are not aware of these organisations, functions, or how to access them. Women do not trust any agency or are not aware of any agency that they can access. Women are afraid of accessing legal organisations and lack the determination to do so. Women fear the society, customs and traditions and believe that access to relevant institutions is costly.
- Husbands and sons exercise little pressure on women to claim their right to inheritance. On the other hand, they show more support to women when they claim their inheritance rights.
- Some women feel that their and their children's lives are in danger and/or under threat if they claim their right of inheritance. Women who do claim their rights fear and expect violence. Violence may also affect these women's children.

- Social motives are the most significant factors that oblige women to consent to *Takharuj* and abandon their right of inheritance. Prior to the estate holder's death, an excellent relationship with the family provides a solid motive that urges women to waive their inheritance rights with a view to maintain this good relationship. Women would receive a portion of the price of their shares of inheritance. Compared to the deteriorating economic situation of their families, women's economic status is sometimes so well that they do not need their legally prescribed inheritance shares. In this context, the majority of women who relinquished their shares of inheritance had not been aware of the real value of the estate or the value of their shares.
- Families showed various reactions to women's claim of the right of inheritance. Predominantly, the majority of families denied this right. Others either postponed or delayed distribution of inheritance shares. Some families proposed a settlement at a lesser amount. A father/mother and brothers were infuriated and refused women's claims of their right of inheritance. On the other hand, a few mothers supported their daughters who did claim their hereditary right due to the patriarchal culture that gives priority to males in inheritance. Male children are considered to be in charge of their mothers when they get old. Daughters, together with their husbands and children, are seen as strangers. It is also commonly believed that the claim of inheritance is a result of pressure exercised by the woman's husband. Therefore, he should be deprived of inheritance.
- The majority of families do everything within their power to place pressure on women to discourage them claiming their right of inheritance. Family members break off relations with, abash, insult, revile, yell at, and/or threaten to beat women. Women's attempt to seek redress in the formal judicial system is underestimated, as family members are already aware of the lengthy process of litigation. In practice, some women were beaten and physically assaulted. In a few cases, women were forced to marry relatives while others were prevented from getting married at all. Options to marriage were also restricted.
- In essence, women are denied their right of inheritance due to prevalent customs and traditions, preference of male to female children, unwillingness to transfer inherited properties to another family, and unawareness of relevant legal provisions and laws. To a lesser extent, women are deprived of inheritance because of family poverty, mediocre estate, and maintenance of family cohesion.
- Another reason why women are dispossessed of their right of inheritance is that men work with their fathers to develop agricultural, business or industrial enterprises. Men contribute to increasing capital, expand businesses, and purchase land and real estate.
- A variety of deprivation techniques are in place which can take effect by the signing of legal instruments, the content and legal consequences of which women do not realise. Women can be excluded from certificates of succession. A mother's share of the father's estate is distributed to male children only. In this case, the mother does

not inherit and her share of inheritance devolves to her sons only. Accordingly, female children are barred from their mother's share.

- Disinheritance of women results in feelings of coercion, injustice, and oppression. Overtime, enmity and hatred grows between brothers and sisters, within the family, and among relatives. Family relations that are supposed to be built on compassion, sympathy and cohesion -destabilise. Families break apart. Women lose the support of their family, which they have always relied on in times of need, affecting them both mentally and physically. Economic conditions decline because shares of inheritance are not distributed fairly. As a result of the husband pressurising the wife to receive her right of inheritance, a woman's relation with her husband might also deteriorate. Discord may even affect future generations. Furthermore, inheritance disputes may result in murder within the family, forcing a family to abandon their land and properties.
- The right of inheritance is not viewed as a right of women as it is with men. Hence, to claim inheritance results in numerous problems, adversely impacting family relations as well as economic and psychological conditions of female heirs.
- Marking a relatively low percentage, but also indicating a higher tendency among brothers than among sisters, answers to the research survey sample highlight the importance of the effects brothers exert on their sisters. As beneficiaries, brothers attempt more than others to exercise pressure and persuade their sisters not to demand their right of inheritance. Less pressure is placed on women by convincing them of the role brothers play in protecting their sisters. Compared to women's expectations, brothers have shown less support to their sisters than they did in the past
- In many cases, going to the court is the last resort for women to receive their right of inheritance. Nevertheless, female claimants in inheritance cases outnumbered male claimants in the Ramallah, Hebron and Nablus courts. Women did not seek legal redress because litigation procedures are expensive and complicated. They do not know how to file a case or access a court of law. Women who had resorted to court did not receive their rights. The process of litigation can take a long time. Even if the court rules in their favour, women are aware that court decisions would not be enforced. Women are also distrustful of the formal justice system.
- According to the survey sample, the society does not consider women's claim of their right of inheritance as a stigma. The society's view of women who claimed their right has not changed. The majority of neighbours and acquaintances supported women who did so. However, the society views women who sought redress in the formal justice system to claim their inheritance rights unfavourably. In these instances, women were seen as recalcitrant and accused of deviating from common social norms. As a result of the society's position, some women who had resorted to court regretted it. On the other hand, the majority of women who claimed their right of inheritance had more confidence in themselves.



- Women's claim of their right of inheritance has encouraged other female heirs to do so. It has also encouraged women in local communities to claim their rights.
- A low percentage of women have resorted to Governor Offices. These women were unaware of functions and the role Governor Offices play in family dispute resolution, including inheritance cases.
- Typically, the process of accessing a woman's right of inheritance takes a long time. In 15% of the cases, claims took more than ten years. Including claims filed to the court, it took five years to settle inheritance claims in almost 50% of the cases, this portraying the uneasy access to inheritance and lengthy procedures of litigation at national courts. The period of disposition might be long, requiring patience in dealing with a purely legal case. This is all combined with tremendous social and familial pressure, focusing on the importance and role brothers play in the protection of women. In this context, women could be barred by their families, brothers, or surrounding community.
- To receive their inheritance rights, very few women resorted to the Palestine Monetary Authority (PMA) and/or banks, Ministry of National Economy (MoNE), and Ministry of Transportation (MoT). A quarter of the surveyed women went to the Palestine Stock Exchange (PEX). The majority of women described procedures at the PMA/banks, MoNE and PEX as difficult or very difficult. One third of the respondents described MoT procedures as difficult.

**The research paper comes up with the following recommendations:**

**Legally,**

- Enact a law to ensure empowerment of Palestinian women to access their right of inheritance. The law should facilitate demonstration of simulate dispositions undertaken by the estate holder during his lifetime in the interest of some heirs, excluding others. It should also provide for more severe penalties against men who deprive women of inheritance.
- Develop a user friendly legal guidance manual on the right of inheritance, clearly stipulating how the right is accessed.
- Continue to implement the Circular on *Takharuj*, restrict implementation of *Takharuj*, and ensure that parties to *Takharuj* transactions fully understand their rights.
- Make sure that notaries public inform persons, who constitute a third party as a attorneys of their properties, of the legal dimensions of powers of attorney and of the dispositions their attorney might carry out.
- Reduce and/or postpone court fees in inheritance cases with a view to facilitate women's claim of their right of inheritance.
- Stipulate that a copy of the family record is presented to ensure that all family members entitled to inheritance are included.

## **Socially,**

- Launch community, religious and legal campaigns throughout media outlets to raise public awareness of women's right of inheritance, highlight significance of women's access to hereditary rights, and ensure that women fully enjoy these rights. Messages will be delivered to women and men at places of worship. The outcomes of legal rulings in cases where women have been deprived their right of inheritance will be made very clear. The role media agencies play in public awareness and education will be emphasised, demonstrating all aspects of women's right of inheritance.
- Raise women's awareness of their rights, providing them with the skills they need to claim and exercise them. Women will be familiar with the organisations, to which they can resort to receive their right of inheritance.
- Include in school curricula courses on the right of inheritance and raise children's awareness of the concepts of equality, significance of women's employment and education. Violence of all forms should be renounced as it defies human morals, in which the Palestinian society should be grounded.
- Legal institutions will launch campaigns to publicise their functions and capacities to help women access their rights of inheritance.

## **Institutionally,**

- Establish a special department of inheritance with a view to distribute estates. Accordingly, heirs do not need to provide special procedures in line with certificates of succession issued by *Sharia* and ecclesiastical courts, ensuring equitable distribution of estates.
- Provide free legal aid to women in inheritance cases.
- Support women to receive parallel legal services to pursue their cases, provide financial support to the local community, women organisations and relevant networks to offer legal advice, provide emergency assistance, and document and disseminate best practice.
- Provide training to lawyers, judges, employees, and police officers in relation to women's rights and advocacy.