



Some preliminary thoughts on the readiness to engage with Islamic intestate succession by Middle Eastern legislatures

Position Paper for: *Islamic Law and Gender Equality in the Balance: Inheritance Law Reform
in Tunisia*, Dialogues Seminar, 13 June 2019

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It is often argued that the strong qur'anic basis upon which much of succession law is established has resulted in this area of law remaining untouched for centuries. However, there are only eight verses related to intestate succession in the Qur'an. Four of them (4:7-9, 33) deal with general principles regarding access to succession; one deals with the shares of the children and the parents of the deceased (4:11); one with the shares of spouses (4:12 first part); and two address the share of siblings of the deceased (4:12 second part; 4:176). The bulk of the rules and regulations are thus based on the *sunna* and the various and abundant interpretations and legal works of the Muslim scholars.

Interestingly, in Islamic family law - that accounts for far more Qur'anic verses - reforms have been implemented in the last decades in practically all Muslim jurisdictions to a far wider extent. Thus it is questionable whether it is only the qur'anic foundation of intestate succession rules that has inhibited legislative reform.

The reasons for the quasi-stagnation of legal development in intestate succession and the lack of pressure for change may have to be sought elsewhere. First, one could think of a general societal consent according to which pre-conceived ideas of a fair distribution of the estate – established by a divine authority – ought to be followed. Secondly, the social and moral dependencies within the families and the general support and maintenance duty of men vis-à-vis women have created a strong reliance of females on the support of their male relatives. Moors, for example, explores the structures of transfer of property within Palestinian families, where women are ready to give up their inheritance right in order to gain and perpetuate the financial and moral support of their male relatives.

Finally, and possibly more compellingly, the reason for the lack of an impetus to reform lies in the fact that to a great extent family property is passed to the next generation while the owner is still alive. In fact, the history of intestate succession in Islamic countries is also the history of a circumvention of the rules on compulsory succession. Powers, for instance, traces in his analysis of various historical court cases and fatwas the strategies adopted by Muslims to circumvent the rules of succession by transactions *inter vivos*. As a matter of fact, Islamic law draws a strict line between *post mortem* and *inter vivos* transactions. There is a significant

difference between the practically unlimited power of a person to dispose of his/her property while alive, as opposed to the limited power to make arrangements for the disposal of property upon death. The reasons for circumventing intestate succession law are generally grounded in the fact that the distribution scheme under Islamic law is often felt as producing an inappropriate distribution of the estate, which does not reflect the preferences of the deceased.

And there are certainly other grounds and reasons that still need to be uncovered.