



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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Whereas various areas of family law including custody, divorce, and the marriage age have become subject of reform in most Muslim-majority countries since the 1990s, intestate succession has proven to be the most difficult area of reform. This was also the case during the reform that led to the issuing of the new 2010 Jordanian family law. On the issue of inheritance, Jordanian women's groups toned down their demands. They did not ask for equal inheritance rights for men and women, even though many members of women's groups express this preference in private. Since inheritance is based on Quranic stipulations, it is, according to these advocacy groups, the most difficult area to reform. Women's groups in Jordan have therefore focused their efforts on procedural reform. Instead of calling for equal inheritance rights for men and women, the JNCW focused on increasing judicial oversight to ensure that women actually receive their legal inheritance shares.

This approach was motivated by the results of a study on inheritance practices in the governorate of Irbid carried out by the Jordanian National Forum for Women (JNFW) in 2010. The study found that 74 percent of those women who were entitled to inherit did not receive their full legal inheritance. The study was based on cases involving women between the ages of 25 and 50 from 1372 families in all districts of the Irbid governorate. The JNCW secretary general also claimed that so-called honor crimes, ostensibly motivated by sexual misconduct of female family members, are in fact often driven by financial considerations. Women become victims of physical violence because they refuse to renounce their inheritance shares.

The JNCW proposed that women should not be allowed to renounce their inheritance share less than one year after the death of the person from whom they will inherit, and that women should be given detailed information about the value of their rightful inheritance. The one-year grace period is designed to guarantee that women do not turn down their inheritance due to emotional distress and grief. The JNCW framed its demands in religious terms, emphasizing the Quranic provisions that stipulate that women's inheritance shares must be protected. Since Islam is the religion of the state, Quranic provisions must be respected.

The 2010 law partially accommodated the JNCW's demand for greater judicial oversight. The 2010 family law, like the 1976 law, continues to treat men and women differently. Jordanian inheritance provisions are gendered. They depend on women's status



and their relationship with the deceased. However, the 2010 law changed the procedures for renouncing an inheritance (*takhāruj*). Article 319 of the 2010 law stipulates that the Supreme Justice Department (SJD), the shari‘a court administration, will issue instructions that regulate how a person may renounce an inheritance share. These instructions were issued in January 2011. Article 1 stipulates that *takhāruj* cannot be registered until three months have passed since the death of the person from whom the heir is entitled to inherit. However, paragraph b of the same article allows for exceptions to this rule. With the SJD’s agreement, *takhāruj* can be registered before the stated three-month period has passed for a “legitimate or legal reason.” The regulation does not specify what counts as a legitimate or legal reason.

The 2010 law states that *takhāruj* means that the heirs come to an agreement that some of them renounce their inheritance. However, such agreement requires prior knowledge of the inheritance. The regulations make it clear that the person who is renouncing the inheritance—in most cases a woman—must know the value of the inheritance. According to the new *takhāruj* provisions, the court is required to ensure that the party that is renouncing the inheritance understands the consequences of that act.

The 2010 law acceded to the demands of women’s groups by increasing oversight over inheritance procedures and by establishing provisions that improve women’s knowledge of the new provisions. Although the law is framed in gender-neutral language, it is intended to increase women’s access to their legal inheritance shares. Statistics issued by the SJD do not allow us to determine whether fewer women renounce their inheritance shares. However, the chancellor of the SJD explained that the SJD no longer registers cases in which women want to renounce their inheritance in favour of men. It thus seems possible that procedural changes and increased judicial control over the practice of *takhāruj* might prove to be an effective tool in strengthening women’s inheritance rights.