



المركز العربي للأبحاث ودراسة السياسات
Arab Center for Research & Policy Studies

RESEARCH PAPER

Women's Right to Inheritance in Jordanian Law: Requirements and Prospects of Change

Muhammad Alazzeah | Aug 2017

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Series: Research Paper

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Introduction

Inheritance occupies an extremely high place in Islamic jurisprudence or *fiqh*, which jurists label as an "obligation" or "inheritance." Its centrality in Islamic law is due to the connection of inheritance to an individual's "obligations" in the accurate terminological sense of the word. Thus, to properly carry out inheritance is to commit to the divine order. In the Quran, it is the *Surat An-Nisa*, (the '*Surah* of Women,') which clarifies inheritance provisions in detail, and is the base from which jurists build law through explanation. Juridical explanations have expanded to include a wide variety of issues, while other provisions were arrived at through the teachings and permissions of Prophet Mohammad, the *sunnah*, as well as through deductive analogy *qiyas*, and consensus *ijmaa*.

It is not only the Quran that emphasizes the importance of inheritance, but also the Hadith. Abu-Hurairah reported that the Prophet Mohammad insisted on: "Learn the obligations (inheritance laws) and teach them as they constitute half of knowledge, and knowledge is forgettable. It is the first thing that is taken away from my nation."¹ Abdulla Ben Masood reports the Prophet's conversation where he said: "Study the Quran and teach it to people. Learn the obligations (inheritance laws) and teach them to people as I will die, and knowledge will end. Sedition will arise when two men disagree on inheritance and then there would not be anyone to separate them."² These texts appear in the *Sunnah* books,³ and regardless of the differences among hadith scholars about their ranking, they are indicators of the view of the companions and followers of the Prophet in the early centuries. They emphasize the importance of this branch of Islamic knowledge and the necessity of spending time and attention on the financial rights and liabilities of individuals.

By and large Arab legislation has adopted the provisions of Islamic law (*Sharia*), even where it concerns non-Muslims. Islamic law provides the baseline for all members of

¹ Mohammad Ben Ali al-Shokani, *Nail al-Awtar*, revised by Issam al-Deen al-Sababti. (Cairo: Dar al-Hadith, 1993), p 65.

² Yehya Ben Abi al-Khair al-Omrani, *al-Bayan Fi Mazhab al-Imam al-Shafeei*, revised by Qasim Mohammad al-Nouri, Part 9 (Jeddah: Dar al-Minhaj, 2000), p 7.

³ Worood Adel Ibrahim Awartani, *Provisions of Women's Inheritance in Islamic Legislation* (Master's Thesis, An-Najah University, Palestine), 1998.

society unless the parties involved are in agreement about the arbitration of the dead person's will.⁴ Regarding women's right to inherit, legislation has been determined by Islamic jurisprudence and deduced based on verses from the Quran, the Hadith, and consensus.⁵ The present study seeks to examine the relationship between the *Sharia* laws, Jordanian legislation, and comparative scholarships when it comes to women's right to inherit.

Sharia Law and Women's Right to Inherit

1. The *Sharia* Basis for Women's Right to Inheritance

Interpreters and *fiqh* jurists base the legitimacy of women's inheritance rights on verses from *Surat An-Nisa*, which pronounces: "Allah instructs you concerning your children: for the male, what is equal to the share of two females" (11). In interpreting this verse, al-Tabari includes a group of sayings; he explains that the *surah* was revealed to replace a custom that early Arab society practiced before Islam whereby they would bequeath their wealth to their sons and provide for their parents by will. This verse, therefore, came to establish the right of women to inherit. Al-Tabari further explains the right through his interpretation of next *surah* verse: "For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much - an obligatory share" (7). This passage, al-Tabari reports, was revealed because people from what is often termed the "age of ignorance" (Jahiliyyah⁶) would leave their wealth to their male sons and exclude females." Ikrimah gives a similar interpretation through the hadith, saying that the *surah*:

...was revealed due to the case of Um Kahla and her daughter, Thalaabah and Aws Ben Suwaid who are the Helpers of the Prophet "Ansar." One of them was her husband and the other was the uncle of her son. She said, 'Oh, Prophet Mohammad, my husband died and left me and his daughter. We did not receive an inheritance.' Her son's uncle said,

⁴ Fathi Ragheb Hanna, *Provisions and Regulations of Inheritance and Wills by Islamic and Christian Laws*, Accessed on February 8, 2017: <http://fathyraghebhanna.com/php2/images/stories/books/allbook.do>

⁵ Awartani

⁵ Awartani

⁶ The term *jahiliyyah* is derived from the verbal root *jahala* "to be ignorant or stupid" and refers to the period before the advent of Islam

'Oh, Prophet, she does not have a horse, nor is she weary, nor does she stave off an enemy. She does not gain any money and is a dependent.' Therefore, the verse was revealed, 'For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much - an obligatory share.'⁷

In explaining this verse, al-Qortobi narrates five points, including one on the context of the revelation, citing it as proof that before Islam, inheritance was only for "those who rode horses and fought."⁸

Al-Qortobi goes further in *Sahih al-Bukhari*, showing that the *surah* was revealed because of problematic incidents, and discussed how the problem continued in the early days of the Prophet as companions were asked to assist with disputes. In one case the text narrates:

"Abu Mousa was asked about a daughter, a son's daughter and a sister. He said, 'The daughter and sister get half, and Ibn Masood will agree with me.' When Ibn Masood was told of this, he said, 'I am lost, then, and I am not of the righteous ones, for I follow what the Prophet (God's Prayers and Peace Be upon Him) has decreed with the half for the daughter and the sixth for the son's daughter. The remainder of the sixth and whatever else remains go to the sister.' When we went to Abu Mousa and told him of this, he said, 'Do not ask me then if this agreement was made amongst you.'⁹

The consensus or *ijmaa* of texts from the Quran and *sunnah*, then, clearly establish a legitimate basis for the rights of women to inherit. They replace prior customs and norms that deprived women of this right under the pretext that they are only deserved by people who "countered wars and fought the enemy."¹⁰ No one ever argued with Muslim jurists or interpreters about women's inheritance rights, which were understood as not being

⁷ Mohammad Ben Jarir al-Tabari, *Tafseer al-Tabari: Jamii al-Bayan An Taawil Ay al-Quran*, revised by Abdulla Ben Abdel-Mohsen al-Turki, Part 6, (Cairo:Dar Hajr for Printing, Publication, Distribution and Advertisement, 200), p 339 onwards.

⁸ Mohammad Ben Farah al-Qortobi, *al-Jamii Li Ahkam al-Quran*, revised by Ahmad al-Bardoni and Ibrahim Atfeesh, Part 5, Version 2, (Cairo: Dar al-Kotob al-Masriyah, 1964), p 255 onwards.

⁹ Mohammad Ben Ismail al-Bukhari, *al-Jamii al-Mousnad al-Sahih al-Moukhtasar Men Oomoor Rasool Allah Salla Allah Alayhi Wa Sallam Wa Soonannohoo Wa Ayyamahoo: Sahih al-Bukhari*, revised by Mohammad Zuheir Ben Nasser al-Nasser, Part 8, (Jeddah: Dar Tawq al-Najat, 1422 Hijri), p 151.

¹⁰ al-Qortobi, p 58.

open to question since there is a decisive text on the matter. However, they disagree on jurisprudence (*fiqh*) details and on specific problems and cases regarding stocks, as will be discussed shortly.

2. Legislative Basis for Women's Inheritance Rights

Article (285), Number (36) of the Jordanian Personal Status Law for 2010 stipulates "the actual or deemed death of the person who bequeaths his inheritance as a condition for it to be carried out." It also stipulates the presence of a living heir at the "time of this decease." Article (285) of the same law states that:

Recipients of inheritance portions are twelve: four males including the father and the father's grandfather. They also include the husband and the mother's brother (going in an ascending order). As for women, they are eight: the mother, the wife, the daughter and the son's daughter. They also cover the sister from both parents, the father's sister, the mother's sister, and the grandmother (going in a descending order).¹¹

These texts and others from the same law on the distribution of shares among heirs indicate that women have a fixed right to inheritance. The legislator clarifies inheritance corner stones: the death of the person bequeathing the inheritance, the heir has to be alive at the time of death of the former and the wealth involved in its wide definition without regard as to the gender of any party involved in the inheritance relationship. Additionally, constitutional texts and principles state equality in front of the law and prohibit discrimination. These commit the legislator to not discriminate based on gender in the right to inheritance.

On the other hand, a careful reader of the Jordanian Personal Status Law texts will notice that the legislator does not touch upon the establishment of a general rule regarding the rights of women to inherit, or any anti-discriminatory practices against them. The law mentions women in this aspect in the context of detailed inheritance provisions, and this might be an inevitable result of the general legislative system in Jordan, which does not depend on systemic anti-discrimination practices in setting decrees. Instead, legal provisions tend to handle detailed issues without heeding to the necessity of having the legislative philosophy reflected in the general texts of the law. It is important to note that in the same way, the Personal Status Law does not mention a text that represents a general rule about the rights of males to inheritance. This is not an excuse for the lack of

¹¹ *The Official Gazette*, Number 5061, 2010.

a text about the rights of women in this aspect, as they are generally more discriminated against. In fact, according to reports and studies, women are the most often deprived of inheritance.¹²

Women and Inheritance in Jordanian Personal Status Law

Jordan's Personal Status Law handles the rights of women to inherit, but there have been variations in judgments based on the woman's legal status, proximity of relationship to the deceased, and differences in religion.

Some people might think that males get "what is equal to the share of two females" is an absolute rule without exception in all cases where women inherit alongside men. This is a misconception. There have been many cases where women inherit equal to men, and other cases whereby woman inherit while a man is deprived of it. Some have used these exceptional cases as an excuse to defend legislative positions that have adopted the rule literally and made it a norm, which will be explored later.

Section one contextualizes the influence of gender on the rights of women to inherit. It will then examine a trend of blocking provisions and the effect of this on women's rights in the Obligatory Will. Finally, it will move on to the effect of differences in religion along with gender in the right to inheritance.

1. Gender and Inheritance Rights

The verse from *Surat An-Nisa* stating "Allah instructs you concerning your children: for the male, what is equal to the share of two females" is the general rule in distributing shares from an inheritance based on biological sex or gender. Here, the male deserves double the portion of the female. Jordanian legislators adopted this rule in the articles of the Personal Status Law in regulating the Obligatory Will and inheritance. In clarifying the types of residual heirs or "asabat," Article (292), Paragraph (B) states:

1-One and more than one daughter with one and more than one son;

¹² "Women and the Right to Property and Inheritance: Facts and Suggested Policies." The Jordanian National Committee on the Affairs of Women, 2010. Accessed February 8, 2017 at: <http://bit.ly/2kRyE1c>

2- The son's daughter and if descending, one and more than one daughter with the son's son and more whether at the same degree of separation or descending and should she need it;

3- One and more than one sister with one and more than one brother;

4- One and more than one father's sister with one and more than one father's brother. In such cases, inheritance among them gives the male double the share of the female.

Article (294) of Item D states that sisters "can make their own sisters their residual heirs by prioritizing that males have 'what is equal to the share of two females.'" In the area of inheritance among heiresses such as aunts and nieces, Article (310) states "Males have 'what is equal to the share of two females' in heiresses." The same principle applies in provisions regarding the Obligatory Will. In Item (D) of Article (279) of the law under the present study states "The will should cover the son's children and the son's children, and if in a descending order by one or more, the male receives "what is equal to the share of two females," each father blocks its own offspring only, and each offspring takes the share of the father only."

In the area of inheritance among married couples, Jordanian legislators adopted the same system in making the share of the male double the share of the female. The husband receives half the wealth of his deceased wife if she does not have a son. He receives a quarter of it if she has a son while the wife inherits around a quarter of her husband's wealth if he does not have a son. If he does have a son, then she only gets an eighth. Article (288) of the Jordanian Personal Status Law, which is the focus of the present study, states "There are two cases concerning the husband: "A- Half if his dead wife has no offspring (heir). B- A quarter if his dead wife has an offspring (heir)." In the same way, Article (289) of the same law states: "There are two cases for a wife or wives: A- A quarter if the husband does not have an offspring (heir). B- The eighth if he has an offspring who is an heir." It should be noted that the template of the previously cited Article (289) puts forward the possibility of a situation in which there is a huge discrepancy in the shares of women and their male counterparts if the deceased has more than one wife. In this case, all of them (whether four, three or two) will be partners in the quarter or the eighth if there is an offspring who is also an heir. It is impossible for the husband to be in such a legal position as he will definitely have the half or quarter to himself if the wife has an offspring (heir).

The effect of biological sex or gender on inheritance rights is not confined to the heir; it goes beyond this to the gender of joint-origin heirs. Provisions and stock amounts differ if the heirs are the father's brothers and sisters as opposed to the mother's brothers and sisters. In this respect, Article (295) of the Jordanian Personal Status Law states "There are seven cases for the father's sisters: A- half for one if she does not have siblings. B- Two thirds for two and more sisters." Article (296) also states that "there are four cases for the mother's brothers or sisters: the sixth of a share if it is one person whether male or female and B- The third of a share for two and more, equally divided among males and females." The legislator in these two texts is bringing down the sisters of the father to the status of his biological daughters whereas it makes the shares of the mother's brothers and sisters less than that.

Making the share of women less than the share of men in inheritance as a general principle and norm has its consequences. For example, it leads to a difference in the blocking provisions of each side's residual heirs "asabat." Blocking is the reduction of the share of one of the heirs or dropping it altogether due to the presence of an heir who is closer to the deceased. The Jordanian Personal Status Law has clarified the types of blocking and its provisions briefly in Article (311) which says: "A- Blocking is the act of depriving the heir of all the inheritance or of some of it; B- A person blocked from inheritance can block someone else whereas a person forbidden from inheritance cannot block others." The Jordanian legislator, then, did not go beyond the general rules in defining the types of blocks: it is either "a reduced block" or "a depriving block." Additionally, legislation does not report any exception in this respect that may "infringe upon" the priority of males over females in distributing and dividing wealth.

In light of the rule of males receiving "what is equal to the share of two females," most residual heirs of the deceased will have the biggest share if the heir is female, even if she is his biological daughter. By contrast, they will be deprived of it completely if the heir is male, even if it is his son or not the direct son of the deceased.

Some have tried to justify this discrepancy in blocking and primary inheritance provisions between males and females by claiming "a degree of proximity" to the deceased. They say, "The problem with prioritizing children over fathers or mothers in principle lies in that children are closer to the deceased than his parents are. Therefore, they were given

preference of mention in inheritance-related verses."¹³ Upon examining this saying, one will find that in reality, it is talking about "relatives" and not "kinship." Its proponents reiterate that parents have priority in being favored. It is encouraged to treat them well as there are decisive and strong contexts indicating that they are closer to the person than the children.¹⁴

This research will not elaborate on differentiating "kinship" from "relatives" in justifying the differences in provisions of blocking and primary inheritance between males and females as is done by people who work in this field. It is obvious that the intention of most of their sayings is based on the "proximity to the deceased" as being the main reason in prioritizing some and relegating others. However, what draws attention is that they ignore the problem of "degree of proximity" when it comes to justifying the differences in effect between the sexes in prioritizing, relegating, blocking and primary inheritance despite the same degree of separation from the deceased.¹⁵ For example, if a person dies and leaves behind a son, a brother, and a wife, the wife takes the eighth and the son takes the rest. The brother, or the uncle of the heir does not get anything. On the other hand, if the person had a daughter instead of a son, the wife would get the eighth, and the daughter would get the half while the brother or the uncle of the daughter would take the rest because of residual inheritance. The question is, then, are the provisions of blocking and residual inheritance related in principle and at their core to the "degree of proximity" or to the gender of the heir? In light of the previous example one cannot say that the son is closer than the daughter to the deceased father: both are at an equal distance from him and in the same direction. It is not reasonable to say that the uncle is closer to the deceased if the heir is a daughter and not a son. Then, what is the problem in the uncle's inheritance or dropping it based on the difference in gender of the father's offspring? Why do males inherit the wealth in its entirety, unlike females, if a man dies, for example and leaves the sons and daughters of only a brother, as is the case in the general fatwa,¹⁶ despite the similarity in the proximity degree as well? Without

¹³ Ahmad al-Raqab, "Ayat al-Mirath Fi al-Quran al-Kareem: Dirasa Bayaniyyah," Dar al-Iftaa, August 29, 2012. Accessed February 8, 2017 at: <http://aliftaa.jo/Research.aspx?ResearchId=36#.WRqqvsm1tPO>

¹⁴ *ibid.*

¹⁵ "Masaalah Hawla Mirath al-Am Maa al-Ibn Wal Bint," Islam Web, November 4, 2010. Accessed on February 8, 2017 at: <http://bit.ly/2tD7oW>

¹⁶ See: *Kitab: Fatawa al-Lajna al-Daima Lel Boohooth al-Ilmiyyah Wal Iftaa*, Third Part, Nidaa al-Eman. Accessed on February 8, 2017 at: <http://bit.ly/2k1nSRX>

a doubt it has to do with the gender of the heir and the rule of "prioritizing males over females" as many jurists have declared and as this study will reiterate.

An Iraqi legislator handled this issue clearly in the Personal Status Law, Number (188) for 1959 and in its amendments.¹⁷ Article (89) states:

Inheritance by relation and how to bequeath wealth:

- 1- The father, the mother and the children, and if in a descending order, the male gets the share of two females.
- 2- The grandfather, the grandmothers, brothers, sisters and their children.
- 3- The uncles and aunts on the father's side, brothers, uncles and aunts on the mother's side and female heirs such as the aunts and nieces
- 4- The biological sister is treated like the biological brother in the case of a block.

Even though the Iraqi legislator adopts the rule of "the male receives the share of two females" in the general texts of the Personal Status Law, he equalized the sister and brother in the case of a block. In fact, this path encourages a reconsideration of the rule that gives a distant relative who may have cut off his relationship with the deceased a share of the inheritance just for being male.

It is clear, then, that the Jordanian legislator adopted the general norm in inheritance issues that decide the male's share should be more than the female's whether by doubling or by maintaining the difference, even if by less than the double in the case that the heirs are the mother's brothers. Their share is reduced in this case as opposed to what it would have been if they were the father's brothers. This is in addition to the discrepancy in the provisions of blocking and residual inheritance, depending on the gender of the heir. This is all in application of the literal and connotative readings of the texts and their significance from the Quran and the *sunnah*, in addition to the consensus of scholars on the topic.

¹⁷ "Personal Status Law for 1959", United Nations High Commission for Refugee Affairs. Accessed on February 8, 2017 at: <http://bit.ly/2kRAkI8>

Interpreters and jurists, both past and contemporary, have used a group of justifications for this discrepancy in applying inheritance rights based on sex and gender. Following is a list summary and brief analysis of these justifications:

-Spending is primarily the man's responsibility and women should not leave home and mix with men. This is in addition to "superiority of males in creation and brains." This opinion was reported by Imam al-Fakhr al-Razi when he explained the verse "Allah instructs you concerning your children: for the male, what is equal to the share of two females." He justifies this in three ways, first, that a woman's expenditure is less because her husband spends on her while a man's expenditure is more because he is the one who spends money on his wife. Whoever has a bigger expenditure has a bigger need for money. Second, he says that men are more perfect than women in creation, brains and religious positions including the capability to hold positions related to judiciary and imam duties. Also, a woman's testimony is worth half the man's, and people in such a position should be given more. Third, he cites that women are of little brains and lustful, and if they were given a lot of money, great corruption would ensue.¹⁸ In his explanation, Ibn Kathir narrates a similar saying to the effect that work and expenditure are tied to men; therefore, they have priority over females in a raise.¹⁹ In the same way, advanced jurists working in Islamic law adopted this viewpoint despite the change in circumstances. They confirmed the priority of the males over the females in inheritance for economic reasons related to spending and securing subsistence for the family.²⁰

- Old laws and customs of Arabs before Islam and some modern legislation are extremely unfair about the rights of women to inherit whether by deprivation, reduction, or blocking. Allowing women an inheritance even if half the share of a man wipes out all the deprivation that came before and rectifies the absolute equality that comes after "which in its core causes constraint and hardship for the man. This in turn would unsettle the social structure of the Muslim society in which man is responsible for expenditure."²¹ This

¹⁸ Mohammad Ben Omar al-Razi, *Mafateeh al-Ghaib: al-Tafseer al-Kabir*, Part 9, Version 3, (Beirut: Dar Ehyaa al-Turath al-Arabi, 1420), p 511.

¹⁹ Ismail Ben Kathir, *Tafseer al-Quran al-Atheem*, revised by Sami Mohammad Salameh. Part 2, Version 2. (Riyadh: Dar Taybeh Lil Nasher, 1999. p 225

²⁰ Ahmad Mohy al-Deen al-Ajooz, *al-Mirath al-Adel Fi al-Islam Bayn al-Mawareeth al-Qadeemah Wal Mawareeth al-Hadeethah*, (Beirut: Mooassasat al-Maaref Lil Tibaaa Wal Nasher, 1986). See also Awartani.

²¹ al-Ajooz, Awartani.

direction sees that there is no room to argue about the discrepancy in the shares of males and females in inheritance at a time when women did not receive any inheritance altogether according to legislation provisions and old laws. From this perspective, her right to inheritance in and by itself is a completed issue whose virtue has to be recognized.

- The rule of males receiving "what is equal to the share of two females" is not absolute. There are many exceptions in many cases in which the woman inherits the same share as the man and sometimes more. Both the mother and father receive the sixth in the case of the death of a child. The mother's siblings whether men or women get equal share. There are cases in which the female receives inheritance and the male does not. This would be in a case where mostly female inheritance recipients use up the whole wealth so that nothing is left for residual inheritors (asabat) who would undoubtedly include men.²²

In reality, there are plenty of arguments that counter these justifications. Al-Razi's report in *Al-Tafseer al-Kabir* is only one, and interpreters' reports that describe women as lesser than men are generally personal efforts not based on the Quran or *sunnah*. They are interpretations of texts that have been taken out of context and emptied of content. Indeed, in Islam, how is measuring by money not questionable due to the unreasonable claim that women are "lacking in brains and creation" as compared to men? This suggests that men are being rewarded for being men and "perfect in creation and ethics" whereas women are being punished for not being so. How can this hold when a hadith states "women and men complement one another"?²³ This hadith definitively equalizes men and women without preference due to gender. The saying that men are in charge of expenditures and supporting women and that is why their share of inheritance is bigger might have value, but in its context of time and place. Circumstances have changed drastically and cannot be denied. Today women work in most fields, have massive financial responsibilities, and have to help their families subsist whether they are married or single.²⁴ Reports show that there is a decline in the numbers of women entering the labor market, and this is a negative indicator about the growth of the economic sector.

²² Ibid.

²³ Ahmad Ben Mohammad Ibn Hanbal, *Masnad al-Imam Ahmad Ben Hanbal*, revised by Shoayb al-Arnaoot et al. supervised by: Abdulla Ben Abdel- Mohsin al-Turki, Part 43, (Beirut: Mooassasat al-Risalah, 2001), p 265.

²⁴ "Analytical Statistical Report about Labor for 2012", General Statistics Department. Accessed on February 8, 2017 at: <http://bit.ly/2mjgLKg>; Abeer Dababneh and Salah Taher. "Women's Economic Participation in Jordan: the Reality and Challenges of the Private Sector," Markaz al-Phoeniq Lil Dirasat al-Iqtisadiyyah Wal Maaloomatiyyah,

Women are participating alongside men in carrying the burden of economic life and contributing toward total economic growth. Circumstances dictate that women work: it has become a given and is no longer a luxury. Just like men, women strive to achieve independence and to secure means of survival by themselves. The family also needs a woman's participation in meeting the cost of living. It is thus necessary to reexamine and review the excuse that men are in charge of expenditure as a justification for them to get a bigger share than women in inheritance. This revision has to be done in light of fundamental rules and Islamic law restrictions.

The first subject for research must be how to overcome the connotations of the literal text of the verses which decide that males receive double the share of females without having it depend on the condition of time. This point has to be discussed in light of fundamental jurisprudence and practical applications of ancestral scholars known for their work.

Revisions have been done in the past. For instance, Omar Ben al-Khattab, the second of the Rashidun Caliphate, issued a religious decree (*fatwa*) blocking *zakat* for "those who bring hearts together for Islam." It is an exemplary application of several rules of the fundamentals of jurisprudence. On the one hand, he used "common interests" in its wide sense: he captured the purpose of the Quranic reasoning that granted "those who bring hearts together for Islam" a share of the alms (*zakat*) when Islam was still in its early stages. It needed this practice until it became stronger with a larger number of individuals. When this purpose was realized and Islam became strong, there was no longer any need for the provision, even though it had been an absolute and unlimited statement that was general and not specific. The verse says:

Zakat expenditures are only for the poor and for the needy and for those employed to collect [*zakat*] and for bringing hearts together [for Islam] and for freeing captives [or slaves] and for those in debt and for the cause of Allah and for the [stranded] traveler - an obligation [imposed] by Allah. And Allah is Knowing and Wise. (*At-Tawbah* 60)

Omar Ben al-Khattab, then, extracted the purpose of the text and deduced that it is no longer valid, and refused to grant "those who bring hearts together for Islam" their share of the alms in the era of the Caliph Abu Baker.

Al-Qortobi's comment on this verse and on Omar's personal effort and on the opinions of scholars is as follows:

Scholars disagreed on this issue. Omar, al-Hassan, al-Shabi and others said this type of *zakat* stopped with the appearance and rise of Islam. This is famously the opinion of Malik's sect and opinion holders. Some Hanafi scholars said when God blessed Islam and Muslims and defeated the infidels (*kafereen*) (May God curse them), the *sahaba* (God bless them) all agreed amongst themselves under the rule of Abu Baker (God bless him) that their share had fallen. A group of scholars said that they wanted to keep the practice because the imam may need to gain friends for Islam, but Omar cut them off when he saw how strong the religion had become. Younes said: I asked al-Zahri about them, and he said: I have no knowledge of a replacement of that statement. Abu Jaafar al-Nahhas said: based on that, the statement about them is set; if someone needs companionship and is worried that Muslims may catch a disease from them or hopes to improve his Islamic spirit, then he is paid. The judge Abdel-Wahhab said: if they are needed sometimes, then they are given alms. The Judge Ibn al-Arabi said: what I know is that if Islam is strong, then they are removed, and if they are needed, give them their stocks as the Prophet (May God's Prayers be upon Him) used to. The Sahih says: Islam started as a strange religion, and it will go back to how it started.²⁵

Omar ben al-Khattab was reported in the hadith of Ibn Omar to have taken a similar stance:

I heard God's Prophet (May God's Prayers be upon Him) say: while sleeping I was given a glass of milk. I drank until I could see water leave my nails. Then, I gave the remainder to Omar. They asked: Oh, Prophet, what did you give him? He said: knowledge.

This hadith shows the position of Omar ben al-Khattab in theory and practical deeds; his decree is a reference and a source of knowledge. How could it not be so while he accompanied the angel Jibreel (Gabriel) on other occasion?

The fact that the *sahaba* did not deny Omar's fatwa highlights other evidence in support of this personal effort. In jurisprudence it is known as "the sayings of the *sahaba*." When

²⁵ Ahmad Ben Mohammad Ben Hanbal, *Masnad al-Imam Ahmad Ben Hanbal*, revised by Shoayb al-Arnaoot et al., supervised by: Abdulla Ben Abdel- Mohsin al-Turki, Part 43, (Beirut: Mooassasat al-Risalah, 2001), p 265.

²⁶ For Example, see: Ahmad al-Hajji al-Kurdi, *Boohooth Fi Elm Oosool al-Fiqh: Masader al-Tashree' al-Islami al-Asliyyah Wal Tabaiyyah Wa Mabaheth al-Hokom*, (Beirut: Dar al-Basaher al-Islamiyyah, 2004).

these sayings are not denied by other *sahaba* and are endorsed by a big number of jurists, they become a source of legislation based on limitations and conditions detailed in books written on this expansive field.²⁶

In light of this and in the context of the rights of women to inherit, it seems that the reasoning behind the current legislation is that men have the burden of spending on themselves and supporting the whole family. Can this provision be revised if this reason is definitively absent? Can this revision happen based on Omar Ben al-Khattab's effort to bar the shares of "those who bring hearts together for Islam" for the lack of the original reason? Many points justify this comparison between the two cases, for example:

-The unified source: inheritance, alms, and the distribution of shares in the first case and *zakat* over those deserving in the second case, have been explained in the verses of the Quran. The rule of "what is equal to the share of two females" and "those who bring hearts together for Islam" were both specifically and clearly mentioned in the two verses.

-The definitive evidentiary aspect of both texts: none of the past or recent interpreters mention any confusion in explaining "what is equal to the share of two females." They agree that it means to give the male priority in distributing the stocks of the fortune and then he takes double the amount as that is a norm. This remained to be the case since the revelation of the verse. On the other hand, none of the interpreters, *sahaba* or followers disagreed about what is meant by "those who bring hearts together for Islam" described as those deserving of alms. They took their share of *zakat* since the verse was revealed until this provision was stopped in the era of the first Caliph, Abu Baker, based on a fatwa by Omar Ben al-Khattab.

-The lack of limitation and specific referencing in both issues: neither one of the verses nor what is reported in oral and practical *sunnah* indicates that these two statements are conditional or tied to a specific exception.

It can be noticed that the verses from *Surat An-Nisa* and *at-Tawbah*, which this research discusses, both end with the phrase "an obligation imposed by God." This decides that the context of the statement is exactly the same in both verses in terms of significance and gravity of the consequences of violations.

Both verses conclude with two adjectives attributed to God Almighty: "Allah is ever Knowing and Wise" (*An-Nisa* 11) and (*At-Tawbah* 17). This confirms the similarity of the two provisions.

Both verses include provisions about money in a wide sense, dividing it and the shares of specific sectors from it. *Surat An-Nisa* organizes the distribution of money and wealth and focuses on specifying shares and distributing them between males and females. As for the verse from *Surat at-Tawbah*, it organizes the distribution of *zakat* in addition to specifying shares and distributing them among deserving sectors, including "those who bring hearts together for Islam."

This is not meant to push for new legislative provisions in inheritance rules, but rather to create room for dialogue with specialists to study the possibility of revising the provisions of inheritance in general and specifically the share of women. This suggestion comes in light of comparative applications applied by ancestors in similar issues in content and fundamentals. A number of jurists have disagreed with their sheikhs and peers on many issues due to changes in circumstances in the communities they used to live in without being discredited for it. This was not seen as a bad thing; it was rather considered an unprecedented achievement. One example on that is the disagreement of Abu Yousef with his sheikh and teacher, Imam Abi Hanifah to the extent that he was reported to have said on his polemic with Sheikh Malik, "If my friend could see what I did, he would change his opinion like I did."²⁶

The second justification promoted by interpreters to make the male's share bigger than the female's is the one saying that women before Islam never used to receive inheritance and that in modern legislation they might be in an oppressing position. This is a moot excuse and adopts the approach of "negative comparison." It is not reasonable that the answer to the problem of depriving women of inheritance completely is to give her a portion of a share unless the justifiers believe in a "graded statement," which is something no one declared. As a result, this excuse would not hold theoretically or practically because it is based on comparing shortcomings in scholarship and comparative legislations, and no acceptable scholarly approach would support this. Additionally, people who take away women's right to inherit in specific cases have similar justifications regarding expenditure. Therefore, these "negative comparisons" are with the legislations we already have and which already grant a major role to biological sex and gender in making the female's share less than the male's. Many researchers have pointed this out,

²⁶ Ismail Ben al-Kathir, *Al-Bidayah Wal-Nihaya*, revised by Ali Shiri, Part 10, (Beirut: Dar Ehyaa al-Turath al-Arabi, 1988), p 194. See also Chapter 5: "Students Contradicting their Imams in Pursuit of Righteousness." *Majallat al-Bohooth al-Islamiyyah*, Number 47 (1416-1417 Hijri). Accessed on February 8, 2017 at: <http://bit.ly/2k1Z1ST>

labeling these comparisons and critiques “suspect texts” and have dedicated pages to refutations.²⁷

The third and last justification is related to the equalization of women and men’s shares or giving women more than men in some cases. This is a response to people who regard the provision of males getting the share of two females as a fixed one: these cases are proof that the increase in the male’s share over the female’s is not intentional or intended absolutely for its own sake. Rather, its purpose might change, and the evidence is the existence of such cases highlighted by the same people endorsing the set provision of males receiving “what is equal to the share of two females.” If this rule has exceptions by the admission of those who champion the basic principle, then what is wrong in researching the exceptions on a wider scale?

2. Gender Influence on Rights of Women in the Obligatory Will

Jordanian legislation adopts Article (279) of the Personal Status Law about the Obligatory Will. It states:

If a person whose son has children dies and his son dies before him or at the same time, those grandchildren deserve a third of his wealth by will within the following amount and conditions:

A- The Obligatory Will should include the amount of their share of what their father inherits from his dead father assuming their father died after the death of his own aforementioned father. It should not exceed a third of the wealth.

B- The grandchildren do not deserve a will if they are the heirs of their father’s parents, whether it is the grandfather or the grandmother.

C- The grandchildren do not deserve a will if their grandfather already left a will for them or gave them what they deserve without return while alive with this Obligatory Will. If he gave them a will or gave them less than that, it has to be completed. If he willed more to them, the extra portion becomes an optional will. If he has willed his wealth to some, the others should receive the same amount.

²⁷ See Awartani, al – Ajooz.

D- Males get double the share of females if the will is left for the son's children and for the children of the son's son, and if in a descending order by one or more. Every father blocks his offspring solely and every offspring takes only his father's share.

E- The Obligatory Will has priority over optional recommendations in completing the third of the wealth.

The Jordanian Iftaa' Department confirmed the legitimacy of the Obligatory Will in fatwa Number (835) on July 15, 2010.²⁸ Before analyzing the position of Jordanian legislation towards women regarding the Obligatory Will in detail, it should be noted that this type of will is the source of a big controversy among scholars. In fact, a group of scholars have agreed that the will is illegitimate. Ibn Abd al-Berr states: "They agreed that the will is not obligatory except in the case of a sect that went astray, so it had to be forced to oblige."²⁹

The legal frameworks of several Arab states, including the Jordanian one, have adopted the Obligatory Will. Through this will the grandchildren inherit their father's share by not more than a third if he died before or with the father. It is a will in the sense that it is not an estimated stock from the wealth. There is no clear text on it in the Quran or in *sunnah*, but it is obligatory because it does not depend on the will of the dead person or on the endorsement of the heirs; it was legislated in order to retain the rights of the grandchildren to their father's share if he died with or before the grandfather.

The legitimacy of the Obligatory Will stems from the sayings of some scholars who based their interpretation on verses and conversations from the hadith. Ibn Hazm al-Zahiri is not only one of the most prominent people who talked about the Obligatory Will for the grandchildren, but he is also one of the most prominent advocates of an obligation towards relatives who do not receive an inheritance. He says:

An issue: every Muslim is obliged to leave a will to his relatives who do not receive an inheritance either due to their status as slaves, as infidels, or due to the presence of

²⁸ "The Obligatory Will in the Jordanian Personal Status Law", Dar al-Iftaa'. Accessed on February 8, 2017 at: <http://aliftaa.jo/Question.aspx?QuestionId=845#.V7X2w-8korE>

²⁹ Yousef Ibn Abd al-Berr, *Al-Tamhid Lima Fil Mawte' Men al-Maani Wal Asanid*, revised by Mustafa Ben Ahmad al-Alawi and Mohammad Abd al-Kabir al-Bakri, Part 14, (Morocco: Wizaret Shoon al-Awqaf Wa al-Shoon al-Islamiyyah, 1387 Hijri), p 292. And Reem Adel al-Azar, "The Obligatory Will: A Comparative Study," (Master's Thesis, Faculty of Sharia and Law, The Islamic University in Gaza, 2008). Accessed on February 8, 2017 at: <http://library.iugaza.edu.ps/thesis/82827.pdf>

someone who blocks them, or because they do not receive an inheritance, and so he wills to them what he would like to leave for them. This will not be curtailed. If he does not do that, then they have to be given whatever the heirs or guardian deem appropriate. If his parents or one of them is an infidel or a slave, then he should also leave a will to them or to one of them if the other is not a slave or an infidel. If he does not do that, it is a must to give one or both persons money, and then he can leave whatever else he wills. If he leaves a will to three of his mentioned relatives, it should be fulfilled. Relatives are those who share the dead person's father's family name. The same applies to the mother's side; relatives include whoever has the same family name as the mother's. These are relatives by linguistic definitions, and no one else could be described as such without proof. The proof to that is the verse in which God Almighty instructs as follows: 'a bequest for the parents and near relatives according to what is acceptable - a duty upon the righteous. Then whoever alters the bequest after he has heard it - the sin is only upon those who have altered it. Indeed, Allah is Hearing and Knowing' (Al-Baqarah 180-181). This is an obligation as you have heard. The parents have been left out of it just as the closest heirs. This obligation will be abided by for those who do not inherit anything: it is their due right. There is an obligatory part of his money due to be set aside for those they owe.³⁰

The Jordanian law did well to adopt the Obligatory Will in the Personal Status Law despite the controversy that surrounds it. This shows that there is room for personal effort adopted by the legislator. It also allows for a discussion of issues that need revision in the law, including inheritance provisions. This praiseworthy direction was, however, accompanied by discrimination in the application of the Obligatory Will based on gender. One might note in Article (279) Paragraph (D), that the son's male children deserve to inherit from the Obligatory Will while none of its provisions apply to the daughter's children. Undoubtedly, this is a provision that requires contemplation and examination. How can argumentation of the legitimacy of the Obligatory Will differ by the gender of the deceased? Do not the daughter's sons and her daughters deserve to have their rights maintained exactly like the son's sons and his daughters? Some people protest that including the daughter's offspring in the Obligatory Will would create exceptional cases in which the farthest relative inherits more than a closer family member. For example, if a person dies and leaves behind two living daughters as well as a sister, while a third

³⁰ Ali Ben Hazm al-Andalusi, *Al-Muhalla Bil Althar*, Part 8, (Beirut: Dar al-Fikr d t), p 353.

daughter is dead but with a living daughter. In such a case the daughter's daughter inherits a third of the wealth while the two daughters divide two thirds of the remainder, and the rest goes to the sister. If the wealth left is 18 acres, the daughter's daughter will take a sixth (6 acres), the two daughters will take two thirds of the rest (8 acres, 4 each) while 4 acres will remain for the sister. In this way, the farthest kin gets the biggest share because of the absence of a rule that applies the Obligatory Will to the daughter's sons and daughters. There are many examples of this sort outlined in jurisprudence studies.³¹

While this argument makes sense on the surface, it still uses the excuse of an inevitable result in inheritance generally—as the son inherits double the amount of the female although they have the same kinship with their father—he also inherits more than the mother of the deceased although she should be favored in charity and good treatment as the verse instructs (“And your Lord has decreed that you not worship except Him, and to parents, good treatment”).³² This is in addition to the Prophet's conversations that advocate treating the mother well. Based on the discrepancy in shares and that the degree of proximity does not align with the amount, does it follow that the opponents of including the daughter's offspring in the Obligatory Will would negate the legitimacy of inheritance provisions that give the son more than his mother in their share of his father's and her husband's wealth?

To go back to where this section started, the Jordanian legislative body would have fared better if it had equalized males and females when applying the provisions of the Obligatory Will. This would give the daughter's offspring the same as it would to the son's. There is no Islamic law or legislation that would permit this discrimination based on gender.

3. Religious Difference and Women's Inheritance

Article (281) of the Jordanian Personal Status Law states “B- There is no inheritance in the case of different religions; a non-Muslim does not inherit from a Muslim; C- Muslims can inherit from an apostate.” This text has to be read in light of legal and Islamic law that give Muslim men the right to marry non-Muslim “people of the book” whether Christian or Jewish. In such cases of marriage, however, the woman will definitely be

³¹ Al-Azar, p 52.

³² *Surat al-Israa*, Verse 23.

deprived of any right to inheritance from her husband, sons, or daughters due to her faith.

Jordanian law prevents the inheritance of Muslims to be transferred to non-Muslims, but does allow Muslims to inherit from apostates. However, this last condition is highly debated. In preventing inheritance between Muslims and “people of the book,” Jordan has opted for the dominant position.

The Jordanian Iftaa’ Department issued a fatwa that outlines the reasons why inheritance between a Muslim man and his Christian or Jewish wife³³ is not allowed by attributing it to “respecting the privacies of other religions in the issue of inheritance.” This “well intended” justification raises questions about the validity of a “solemn covenant” (*Al-Ahzab 7*) through a marriage contract between a Muslim man and his Christian or Jewish wife while it prevents inheritance between them despite the relationship of marriage. They may also have sons and daughters who will not be able to inherit from their mother or leave any inheritance to her because of difference in religion. This system breaks up families and creates financial and psychological tensions in its structure. It is noted that this loftily worded fatwa reports that a group of the Prophet’s companions and scholars did allow inheritance among different religions in certain cases. An example is the fatwa issued by Ibn Abedeen in his book *Rad al-Muhtar ala al-Derr al-Mukhtar*. Why did Jordanian law not adopt this position, attributed to one of the most prominent Hanafi sect scholars when this is the sect that the Jordanian Personal Status Law depends on as a main source to fill the gaps in cases that were not referenced by texts?³⁴

³³ “The Obligatory Will in the Jordanian Personal Status Law”

³⁴ Article (325) of the Jordanian Personal Status Law, Number (36) for 2010: “Whatever is not covered by this law should be decided on by reference to the more dominant sway of Abu Hanifah’s sect. If that does not exist, the court will rule by Islamic jurisprudence (*fiqh*) provisions that comply most closely with the texts of this law.” The text prioritizes what is dominant in Abu Hainifah’s sect over the rest of Islamic jurisprudence provisions since the Hanafi sect is the pillar of interpretation and legislation in this law.

Practices and Violations of Women's Inheritance Rights

Religious institutions have a very clear and decisive position when it comes to attempts to deprive women of their inheritance rights.³⁵ Investigative reports,³⁶ media reports,³⁷ and specialist documents from national associations³⁸ show that this practice is alarmingly widespread. One expert declared that: "One out of five women concede their rights to inheritance"³⁹ and another study found that 74% of women in the second biggest governorate in Jordan "do not receive their full entitlement to inheritance, and only 15% of them conceded their rights to inheritance voluntarily."⁴⁰

This phenomenon not only violates the economic rights of women, but it also touches on their dignity and right to independence, self-determination, and the freedom to make decisions. This is why the phenomenon should be strongly opposed through parallel paths lead by religious and social awareness campaigns that dissuade the practice.⁴¹ This is in addition to the role played by the legislature that should mandate a comprehensive revision of the Penal Code and the Personal Status Law to ensure the termination of this discriminatory practice.

³⁵ Noah Ali Salman, "Inheritance is an Islamic '*Sharia*' Law for Women as it Is for Men," September 28, 2009, Dar al-Iftaa'. Accessed on February 8, 2017 at: <http://bit.ly/2mri0nf>

³⁶ Abdel Rahman Abu Snaineh, "Personal Status [laws] Encourage Families to Alienate their Daughters from Inheritance," *Al-Ghad Newspaper*, May 2014. Accessed on Seen on February 8, 2017 at: <http://bit.ly/1gUOxrL>

³⁷ Ghadir al-Jallad, "Women's Inheritance between Rightful Sharia Laws and Deprivation by Society," Human Rights Documentaries. Accessed on February 8, 2017 at: <http://ar.ammannet.net/documentary/news/2114/>

³⁸ "Women and the Right to Owning Property and Inheritance"

³⁹ "Personal Status [laws] Encourage Families to Alienate their Daughters from Inheritance."

⁴⁰ "Women and the Right to Owning Property and Inheritance"

⁴¹ Mansour Ben Hassan al-Fifi, *Where is the Right of Those Women of Inheritance?* Version 2, (Riyadh: King Fahed National Library, 1421).

Sharia and Horizons for Change

There are real possibilities within Jordanian law that would secure equal access to inheritance for women. Based on the review of the current situation carried out above, this paper suggests work from three angles: Examining parallel legislation in other Arab nations, through relevant international charters, and finally by thoroughly reviewing the suitability of local legislative and social contexts to implement the steps available.

1. Comparing Legal Contexts

Personal Status legislation and “Family Codes” are similar in many Arab countries as far as general inheritance and will provisions are concerned. The differences between them are limited to provisions for the Obligatory Will. This is a difference worthy of analysis, and Jordan might think of following other nations, which would enhance the principle of equality between men and women. For example, Jordan might follow the Moroccan example, where Article (369) of the amended “Moroccan Family Codes” of 2004 states: “If a person who has a son dies and his son or daughter have children, and the son or daughter die before or with him, those grandchildren deserve a third of his wealth by will and by the following amounts and conditions.”⁴² The Tunisian Personal Status Code follows a similar pattern. It states in Chapter (191) for the year 1959:

If a person dies and he has a son who has children of his own whether male or female, and their father or mother dies with or before him, their children deserve a will and a percentage of the share of what their dead father or mother would have inherited from their father after his death, with that share not exceeding a third of the wealth.⁴³

These texts indicate that Moroccan and Tunisian law has made the Obligatory Will the same for both males and females. This praiseworthy system rectifies the faulty provisions in the other systems. These texts came about as a result of organized and peaceful feminist movements in both countries during the early part of the second half of the last century.

⁴² Thaheer Sharif Number 1-04-22. 3/2/2004. *The Official Gazette*, Number 5184. 5/2/2004. Accessed on February 8, 2017 at: <http://adala.justice.gov.ma/production/legislation/ar/civil/famillear.htm>

⁴³ “Decree Dated on 6 Moharram 1376 (August 13, 1956) Regarding the Issuance of the Personal Status Journal,” al-Raed al-Rasmi, Number 66, on August 17, 1956. Accessed on February 8, 2017 at: <http://bit.ly/213fbrC>

The Egyptian and Kuwaiti laws, on the other hand, have gone even further in establishing equality between men and women in the provisions of the Obligatory Will. Article (76) of the Egyptian Will Law, Number (71) for the year 1946 states:

If the dead person has not willed for the children of his son who died in his lifetime or with him (even if deemed dead) by as much as the son deserved in his father's inheritance if he was alive at the time of his death, the offspring deserve a will by the amount of around a third of this share. This is under condition that he had not already inherited his share and that the dead person has not given him his share without any return through another act by what he deserves. If what he had given him is less than his share should be, he should be willed by the amount that completes that. This will is for the parents of the first layer of the daughters' sons and the children of biological the children even in a descending order, on condition that each parent blocks only its own offspring. The share of each parent is divided over their offspring if in a descending order, as though the parent or parents they descend from died after him and that death was arranged in the order of layers.⁴⁴

The Kuwaiti law regarding personal status, Number (51) for the year 1984 cites a text similar to the Egyptian one.⁴⁵ Both made the Obligatory Will applicable to the offspring of the son and daughter even in a descending order, meaning that the grandchildren and their children and their children, too, inherit through the Obligatory Will by the legal limitations and conditions without discrimination among them based in biological sex or gender.⁴⁶

The Iftaa' Department, the Chief Islamic Judge, and other religious institutions in Jordan have proven that they are incredibly advanced, flexible, and responsive to the requirements of reform with the aim of establishing the principles of justice and equality. In this case, Jordan could easily follow the Egyptian and Kuwaiti systems, and perhaps go further in applying the provisions beyond these states, to the first layer of the dead person's children.

⁴⁴ Jad al-Haq Ali Jad al-Haq, "An Obligatory Will for an Heir for Whom Nothing Was Left of the Wealth," March 2, 1981, Al-Maktabah al-Shamilah. Accessed on February 8, 2017 at: [http://shamela.ws/browse.php/book - 432/page - 832](http://shamela.ws/browse.php/book-432/page-832)

⁴⁵ "Law Number (51) for 1984 on Personal Status Issues (51/ 1984)", Kuwait at: <http://www.gcc-legal.org/LawAsPDF.aspx?country=1&LawID=1018>

2. Relevant International Charters

Article (2) of the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) states: "Member countries denounce all forms of discrimination against women and agree to adopt by all approaches possible and without delay a policy that aims to terminate discrimination against women." To achieve that, it vows to do the following:

A- Include the principle of equality between men and women in their national constitutions or other suitable legislations, if that principle has not yet been integrated and guaranteeing the practical application of this principle through legislation or other appropriate means;

B- Take appropriate legislative and non-legislative measures, including sanctions to ban all kinds of discrimination against women;

C- Impose legal protection of the rights of women equally just as men's and securing the effective protection of women from all discriminatory acts through specialized courts and other generic institutions in the country;

D- Refrain from any discriminatory action or practices against women and guaranteeing that authorities and public institutions will act according to this commitment;

E- Take all appropriate measures to terminate discrimination against women by any person, organization or institution;

F- Take all appropriate measures, including legislative ones to change or revoke set laws, regulations, norms and practices that are discriminatory against women;

G- Cancel all national penal provisions that are discriminatory against women.

Article (14) of the same Convention states:

1- Member countries take into account special problems faced by rural women and the important role they play in facilitating the financial survival of their families, including their labor in non-monetary economic sectors. All measures have to be taken to guarantee the application of the provisions of the Convention to women in rural areas;

2- Member countries take all appropriate measures to terminate discrimination against women in rural areas to secure for them the possibility to participate in rural development and benefiting from that, based on equality with men.⁴⁶

Jordan endorsed the Convention in 1992, an endorsement that was published in the Official Gazette in 2007.⁴⁷ If Jordan is committed to upholding the values of the treaty than it must take action. The Convention clearly highlights the commitment of member countries to the importance of taking legislative and practical institutional measures to terminate all kinds of discrimination against women. These include norms and practices that violate their rights and dignity. Given the local data on the phenomenon of depriving women of their rightful inheritance under the current legislative conditions⁴⁸, it is clear that this is an issue that requires reform actions at the legislative and practical levels. Since Jordan is a member country of this Convention, it is then obliged to commit to its propositions and to execute Article (2), particularly Paragraph (F) of it.

International legislators realize that women in rural and remote areas live through more difficult circumstances; therefore, Article (14) of the Convention is dedicated to tackling this issue. It also commits members to protecting the rights of rural women from violation. There is no doubt that women's economic rights including inheritance rights are violated the most in rural and remote areas.⁴⁹ It also happens at a noticeable rate in big Jordanian cities.⁵⁰ This calls for an immediate revision of the relevant legislation provisions and preparation of guidance and awareness-raising programs that would terminate all sorts of discrimination practiced by families against the rights of women to wealth.

The International Covenant on Economic, Social and Cultural Rights also unambiguously states the importance of achieving equality between males and females, especially when it comes to economic rights. Article (3) states:

⁴⁶ "Convention for the Elimination of All Forms of Discrimination Against Women." Human Rights Commission. Accessed on February 8, 2017 at: <http://www.ohchr.org/AR/ProfessionalInterest/Pages/CEDAW.aspx>

⁴⁷ *The Official Gazette*, Number 4839, August 1, 2007; "Agreements about Women's Rights." The National Center for Human Rights. Accessed on February 8, 2017 at: <http://bit.ly/2IC91Sh>

⁴⁸ "Women and the Right to Property and Inheritance."

⁴⁹ Al-Fifi.

⁵⁰ "Personal Status [laws] Encourage Families to Alienate their Daughters from Inheritance." And "Women and the Right to Property and Inheritance."

Countries that signed this Covenant take it upon themselves to guarantee equality between males and females in their right to enjoy all their economic, social and cultural rights stated in the Covenant.⁵¹

This international commitment should be extended to inheritance and Obligatory Will provisions. This makes it essential to revise the legal code all in light of Jordan's participation in the Covenant.

3. Ready for Change? A Look at the Legal and Social Context

Jordanian society is conservative in nature; it is extremely cautious in responding to any change or in carrying through amendments to the system of traditions and customs that the nation was built on. However, since 2011, Jordan has witnessed a reformation movement that proceeds at a steady pace on different levels. The results of the National Dialogue Commission and the ensuing substantive constitutional amendments in 2011 represent a big step toward the enshrinement of Jordan as a society that prioritizes the rule of the law, the principles of justice, and human rights over inherited customs and traditions that are unfair towards many sectors of society. With the launch of King Abdulla II's Dissuasion Papers in December 2012,⁵² an image of a reformist State began to form in a systematic and studied manner. Rather than reform as random or based on immediate reaction, the shift has seen change carried out gradually and with a measured effect.

Constitutional amendments in 2011 created a commitment from the State to revise the national legislative system over three years. The aim of the revisions was to align the legal code with the Constitution. So while the legal code includes many laws and provisions, some of which were untouchable not a very long time ago, the amendments have seen a gradual change. For example, Article (308) of the Penal Code, exempts the perpetrator from punishment in rape crimes if he marries his victim. This Article was revised and a suggestion was made to amend it, and it may be canceled in the near future. This is an indicator of the broadening of collective reform in Jordanian society. There is a realization that it is high time serious, non-symbolic steps are taken to achieve the principles of justice

⁵¹ "Personal Status [laws] Encourage Families to Alienate their Daughters from Inheritance." And "Women and the Right to Property and Inheritance."

⁵² His Majesty King Abdulla II, "Discussion Papers." Accessed on February 8, 2017 at: http://kingabdullah.jo/index.php/ar_JO/pages/view/id/245.html

for all individuals. Additionally, there have been two bill propositions to Parliament, one regarding protection from domestic violence and the other concerning the rights of persons with disabilities. This also represents a giant step toward revising and developing the laws regulating the rights of sectors that are the most vulnerable to discrimination. Naturally these steps align well with relevant international agreements and charters, which were endorsed and published in the *Official Gazette*.

There is hope in this positive climate as long as the Personal Status Law is revised, in general, and as long as inheritance provisions and the Obligatory Will are revised particularly. This should be done in such a way that ensures justice and equality of opportunities, and also eradicate all forms of discrimination.

Conclusion and Recommendations

This report clearly showed that both legislative and behavioral obstacles hinder women's rights to inheritance. Jordan has revised some aspects of the Personal Status Law and continues to do so. Despite these revisions, change to the code has not been decisive. Most amendments, the latest of which came in 2010, tackle procedural and formal issues or replace some provisions by others—such as what happened in the case of women obtaining a “self-divorce” (kholou). However, the adoption of Obligatory Will provisions, amendments done to divorce procedures, and clarification of the age of maturity in marriage contracts as a general rule, etc. are all issues that predict a flexibility and a genuine will to for legislative reform.

Given this openness for change, the paper suggests the following points of action.

Policies and procedures:

- A national and comprehensive reform strategy should be put in place. This should be based on constitutional and human rights principles and work to rectify the status of women's rights on both the legislative and practical levels. This strategy should include clear and specific timelines monitored by local and international organizations
- Specialized studies and surveys should be conducted in order to clarify the real situation of women's rights in inheritance. This would help legislators in their reasoning around changes to the law. However, factors that contribute to respecting inheritance rights should also be monitored, and these might be more prevalent in certain governorates or regions, or within certain social circles too.

- The Personal Status Law should be revised in partnership with the National Committee for the Affairs of Jordanian Women and relevant government, national and non-government associations and parties. All groups should agree on key reference points.
- Provisions of the Penal Code and the Law of protection against domestic violence should be revised, and measure set that ensure an end or severe limitation to actions depriving women of their inheritance due to typical social customs and reasons not rooted in religion or law.
- Prevention of inheritance blocking should be raised at different stages of school curricula: material for students should cover women's rights, the role of women in society, and their economic empowerment within families.

Practices:

- Development programs should be designed and executed educating employees in national and government institutions concerned with women's rights and their affairs. Through these programs they should gain knowledge and skills regarding human rights and international charters and how to integrate these into their work.
- Design and execution of programs that raise awareness about women's economic rights, especially rights to inheritance. Implementation should focus in particular on some of the rural governorates.
- Design and execution of campaigns aimed at ensuring the effective participation of women and relevant non-government organizations in the process of setting policies and legislation, as well as ensuring an adequate follow up and monitoring process.
- Design and execution of specialized media campaigns about women's rights to inheritance and the Obligatory Will, and the importance of being fair to women through legislation and in practice.
- Design and execution of programs that develop the abilities of ordinary (civil) and Islamic *Sharia* law judges around women's rights, relevant international agreements, and how to incorporate these into judicial provisions since they are part of the national legislation.

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