Since 1998, the Women and Housing Rights Programme (WHRP) of the Centre on Housing Rights and Evictions (COHRE) has worked to promote and protect women’s equal right to inheritance as an essential part of the human right to housing and land. WHRP research, first in sub-Saharan Africa and later in the Middle East and North Africa (MENA region), has revealed that – both in law and practice – women’s inheritance rights are often neglected and rarely respected. The WHRP found striking similarities between these two regions in terms of the reasons why, and the methods whereby, women are denied inheritance.

In mid-2005, the WHRP completed its research of issues related to women’s inheritance, housing and land rights in the MENA region, taking in Algeria, Egypt, Iran, Jordan, Kuwait, Lebanon, Morocco, Palestine, Tunisia and Turkey. The focus was on the legal situation of inheritance rights in these States, as well as women’s experiences of inheritance issues.

This report, with contributions from sister organisations in eight MENA States, reveals how complex such issues are, identifies causes and consequences of inheritance rights violations, and recommends key changes, based on a human rights framework. The main finding is that inheritance laws should be reformed to embody full gender equality. Far more challenging will be the eradication of the cultural roots of discriminatory customs, traditions and notions. Education must also take high priority as most women are unaware of their rights.

The Geneva-based Centre on Housing Rights and Evictions is an independent, international, non-governmental organisation committed to ensuring the full enjoyment of the human right to adequate housing for everyone, everywhere. COHRE is registered as a not-for-profit organisation in Australia, Brazil, Ghana, The Netherlands, Sri Lanka, Switzerland and the USA.

The COHRE Women and Housing Rights Programme seeks to ensure that the specific needs and concerns of women regarding their housing and land rights are addressed and championed. Based in Accra, the WHRP collaborates closely with partners at all levels in supporting and empowering women worldwide to claim and realise their housing rights.
IN SEARCH OF EQUALITY

A SURVEY OF LAW AND PRACTICE RELATED TO WOMEN’S INHERITANCE RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA (MENA) REGION

CENTRE ON HOUSING RIGHTS AND EVICTIONS (COHRE)

GENEVA, SWITZERLAND

OCTOBER 2006
In Search of Equality: A Survey of Law and Practice related to Women’s Inheritance Rights in the Middle East and North Africa (MENA) Region

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This publication is dedicated to them.
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MY COUSIN MAHA*

“When my cousin Maha refused to give up her inheritance, her mother was the first to rebuke her, saying that she would destroy her brothers’ livelihoods by dividing the land between them. The land would also go out of the hands of the family and clan and become the property of the opposing tribe of her husband, she reprimanded. Maha insisted, but she was subjected to systematic harassment, bullying and beating — then finally they held a gun to her head and she signed away the deeds. Maha’s husband was not impressed and decided to get married to another woman. Maha decided to roam the mountains until people said that she had gone mad. Last time I saw Maha, she was totally broken.”

© Fadia Faqir
author and activist
Jordan/UK, 2005

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EXECUTIVE SUMMARY

For over ten years, the Centre on Housing Rights and Evictions (COHRE) has been actively promoting and protecting the human right to adequate housing for everyone, everywhere. Recognising women’s unique relationship to the home and the widespread, persistent discrimination against women that is manifest in their being denied access to, and ownership and inheritance of housing, land and other property, COHRE established its Women and Housing Rights Programme (WHRP) in 1998. Grounding its work in the principles and norms of international human rights law, COHRE creatively combines legal initiatives with practical, effective actions at the local, national, regional and international levels to improve the realisation of women’s housing and land rights worldwide.

The right to inherit is an essential element of the right to adequate housing; it must be upheld and defended as such, for often it is women’s only protection from housing insecurity, economic deprivation and violence. Women constitute the majority of the more than one billion people in the world today who are inadequately housed; undeniably, they also suffer more than men from the consequences of a lack of proper housing. For women, housing is – or should be – more than just basic shelter: it is a home; a place to care for family members and friends, including children, the elderly and the infirm; a place for social interaction; a place of refuge from violence and social instability; and, last but not least, it is a place of work. Yet, upon the death of a husband or other male family member, women and girls are routinely denied their lawful claims to inherit their home, as well as the associated land and other property, to which they have made such a valuable contribution. Many widows and girl children who have been thus dispossessed are ostracised or even violently expelled by their family into homelessness and destitution.

The social position of women in the Middle East and North Africa (the MENA region) resembles that of their counterparts in other regions: most of them can only access housing and land by virtue of their relationship to a man – usually, their father, brother or husband. This creates a dangerous dependency and compels women to maintain subservient relations with male family members, regardless of the physical, psychological and/or emotional costs. Generally, women already have such low status that losing their housing and socio-economic stability can be devastating to them. Furthermore, they rarely find recourse in legal or social systems.

In the MENA region, Islam-inspired law – in particular, the Shari’a – and its jurisprudential interpretation (fiqh) has a major impact on family life. In this religio-cultural context, issues of women’s personal status, including matters related to marriage, divorce and inheritance, are very sensitive topics. It is precisely in the area of personal status law and its application that historically entrenched patriarchal attitudes based on misconceptions of the meaning of Islam can and often do lead to blatant, widespread and persistent discrimination against women.

The denial of women’s inheritance rights in law and in practice is not, as many believe, derived exclusively and/or directly from Islam, but has evolved through application of socio-cultural traditions which, for centuries, have denied women their autonomy and rights. Indeed, Islam’s foundational scripture – the Qur’an – clearly grants women property and inheritance; at the very least, at a level equivalent to half the share received by male relatives. In practice, however, many women and girls are denied even this explicit entitlement. A significant number of scholars consider that the Qur’an and other sources of the Shari’a, correctly interpreted, provide for women’s right to inherit on an equal basis with male relatives. Such views, however, are challenged by contrary interpretations, which often reflect discriminatory traditions and attitudes similar to those found throughout the world in almost every religious and/or cultural context. In this sense, the MENA region is not unique – in other societies, many similar discriminatory traditions and behaviours prevail.

For the benefit of all people, not just women, positive change in the realm of inheritance rights must come. This can only be achieved by adopting multi-pronged yet holistic strategies. One of the foremost aims should be legal reform of inheritance laws to embody full gender equality, entitling women to
inherit on equal terms with men. Even more challenging will be the eradication of the cultural roots of discriminatory customs, traditions and notions. Education must also take high priority as most women are unaware of their rights.

It is of paramount importance to realise that change must emerge from within the religious and cultural traditions in the MENA region rather than being imposed or uncritically transplanted from outside. COHRE’s approach is to work in a participatory manner with governments, civil society and communities, seeking to identify the true foundations of discrimination against women and address them in ways that are appropriate to the context and acceptable to those involved. This approach requires that human rights be promoted not as a lofty ideal but as a practical tool to assure human dignity and security for women.

This publication on the MENA region is an important outcome of the COHRE WHRP’s ongoing Inheritance Rights Project. It is the second in a series of COHRE publications on the subject of women’s inheritance, following and complementing the 2004 publication *Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women: A Survey of Law and Practice in Sub-Saharan Africa*. As highlighted below in Section 4, the COHRE WHRP has found striking and essential similarities between the MENA region and sub-Saharan Africa in terms of the reasons why, and the methods whereby, women are denied their inheritance rights. The main difference is that these human rights violations are cloaked in different terms and traditions. It is a case of different regions, same excuses.

Given the complexity, sensitivity and local specificity of inheritance rights issues in the MENA States, each of the eight comprehensive and informative ‘country reports’ included as subsections of Section 2, below, was prepared not by COHRE but by one of our partner organisations working in the country in question. Clearly, a woman’s organisation working ‘on the ground’ on such issues is best suited to report on the current situation of women’s inheritance and other rights in its own country, as well as on the key obstacles to be overcome and how best to achieve that in its particular national and religio-cultural context. While the evidence presented, the conclusions reached and the recommendations made in the country reports are those of the individual organisations that participated in this project, COHRE fully supports them.

COHRE wishes to express its sincere thanks to all the organisations and individuals who assisted in all aspects and stages of this project, especially those involved in the WHRP’s regional fact-finding mission and in the writing of the country reports. Hopefully, this publication will prove to be a useful instrument in the work of these and other organisations that are committed to securing women’s rights at the local, national, regional and international levels.

Finally, COHRE would like to express its gratitude to the Netherlands Ministry of Housing, Spatial Planning and the Environment (VROM, *Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieu*) for its generous, sustained and patient support of this project.

**Jean du Plessis,**
Acting Executive Director, COHRE,
October 2006.
INTRODUCTION:
INHERITANCE AND ITS IMPLICATIONS IN THE MENA REGION
Inheritance of (or succession to) property owned by familial or other relations, after their death, is an accepted and universal concept, enshrined in most – if not all – national laws and international law. This practice stems from the primal concept of ownership; even in traditional systems of communal ownership, property passes from one person to another in some manner.

Although broadly accepted, inheritance is by no means a simple concept. It is not merely an issue of who should inherit and how much; often, it cannot be resolved in a simple, formulaic manner. It is variously influenced by social relations, economic implications, systems of law, and religio-cultural structures, which are often deeply entrenched. In turn, the ways in which inheritance operates have similarly diverse repercussions on the further shaping of these systems and structures.

In its complexity and the variety of influences acting upon it, inheritance – specifically, how it is established in law and operates in practice – reflects the nature of society and the State, as well as, in the case of inheritance by women, the level of respect for women's role and their rights in the society and State.

Historically, women in almost all societies and nations have been denied inheritance rights. In Europe, for example, women's inheritance rights have only been officially recognised since the late 1800s. The UK recognised such rights in the 1880s; France did not recognise the independent property rights of women until 1930. These examples are typical of a general – indeed global – reluctance to allocate property to women.

1.1 INHERITANCE AS IT RELATES TO HOUSING

Inheritance is vital for women because it is directly related to their right to adequate housing. The disproportionately low level of housing security experienced by women in the world today is largely due to the systematic denial of their inheritance rights.

Nearly 70 percent of the 1.5 billion people around the world who are considered inadequately housed are women. Generally, women lack tenure security in their own right: in order to own or even to have access to housing and land, they have no alternative but to rely on some relationship to a male. This is the result of housing and land tenure systems that favour males. Such discrimination is often subtle; for example, the legal requirement that the home be registered exclusively in the name of the ‘head of household’ — a person typically defined, implicitly or explicitly, as a man.

The discrimination may also be blatant; for example, when a woman is evicted from the marital property after her husband dies, or when a girl child is not allowed to inherit property on equal terms with her brother, on the pretext that she will ‘not need it’ because she will eventually be married. Such instances are still common in most parts of the world; they generally occur with impunity for the violator and without recourse for the violated.

---

1 Madhu Kishwar, Indian women's rights activist.
Such violations are prevalent even though, as noted above, many national legal systems have established at least some protections for the rights of women and girls to inherit. However, in most countries, women and girls rarely, if ever, inherit equally with men and boys. This is indicative of the fact that inheritance is governed by much more than legal systems alone.

Customs and traditions; social systems of kinship, patrilinearity and primogeniture; economics; politics — all these factors create a complex system of inheritance practice that is generally biased against women. The effects for women are often disastrous: loss of housing, land and economic security follow the death of a spouse or male relative and the resulting denial of inheritance rights. Family-owned businesses, land and housing are often reserved for the eldest son (primogeniture) — if merely for the sake of ‘tradition’. Typically, a woman is thought to be unworthy of receiving property, especially land and housing. She is sometimes given token property, such as household items or pieces of furniture (movable property), but the far more important land and housing (immovable property) inevitably passes to a son or other male relative. This clear discrimination occurs all over the world.

1.2 INHERITANCE RIGHTS AS HUMAN RIGHTS

On 12 April 2005, the United Nations Commission on Human Rights adopted a resolution entitled ‘Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing’; adopting States Parties to:

Ensure that women are accorded full and equal rights to own land and other property, and the right to adequate housing, including through the right to inheritance, and to undertake administrative reforms and other necessary measures to give women the same right as men to credit, capital, appropriate technologies, access to markets and information.

This resolution also affirms that discrimination against women with regard to having access to, acquiring and securing housing, land and other property constitutes a violation of their human rights to protection against discrimination. Furthermore, it draws the link between the lack of respect for women's rights to housing and land, and their vulnerability to domestic violence and HIV/AIDS.

The right to equality and freedom from discrimination is set out in the most widely accepted international standard of human rights, the Universal Declaration of Human Rights (UDHR), which asserts in Article 2 that:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. [Emphasis added.]

The rights articulated in the Declaration include: the rights to equality before the law and to equal protection; the right to equality with respect to marriage; the right to own property; and the right to an adequate standard of living, including the right to adequate housing.

These rights are further and more explicitly articulated in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).
Both international covenants protect the rights to equality between women and men and to non-discrimination, which have direct implications for women’s access to housing, land and other property, and inheritance thereof.

The ICESCR specifically protects the right to adequate housing, thus:

Everyone is entitled to an adequate standard of living, including food, clothing and housing ...\(^{10}\)

These covenants oblige the States that have ratified them to ensure that women, on an equal basis with men, realise their housing and land rights. The right to adequate housing comprises the following seven provisions:

- **Security of tenure** – Inhabitants must be protected against arbitrary eviction, harassment and other threats. Secure tenure can take various forms: rental accommodation (private and public), cooperative housing, lease, owner-occupation, emergency housing and informal settlement, including occupation of land or property, among others.

- **Availability of services, materials, facilities and infrastructure** – Adequate housing implies access to potable water, energy for cooking, heating and lighting, sanitation, washing facilities, food storage, refuse disposal, drainage and emergency services. The importance of the proximate availability of these services is clear, given the day-to-day reality of most women, who bear the prime responsibility of caring for the household, children and other family or community members.

- **Affordability** – The principle of housing affordability requires that the amount a person or family pays for their housing must not be so high as to jeopardise or compromise the attainment and satisfaction of their other basic needs. This principle has been interpreted to imply that appropriate credit and financing schemes should be made available to economically marginalised women to enable them to afford adequate housing.

- **Habitability** – Inhabitants must be ensured adequate space and protection against the cold, damp, heat, rain, wind and other threats to health, as well as structural hazards. In this respect, women must also be protected from domestic violence, a clear threat to their physical and psychological health.

- **Accessibility** – Disadvantaged groups including the elderly, children, the physically and mentally disabled, HIV-positive individuals and victims of natural disasters should be given priority in obtaining access to housing. Traditionally, women are a disadvantaged group vis-à-vis housing, due to societal and cultural discrimination and subordination.

- **Location** – Housing must be situated so as to allow access to employment options, healthcare services, schools, childcare centres and other social facilities. The appropriate location of housing is especially vital for women, as it makes it possible for them to fulfil their other fundamental rights.

- **Cultural adequacy** – Housing must allow for the expression of cultural identity and recognise the cultural diversity of the world’s population. Women must be given the chance to partake in the planning of housing to ensure that it reflects their collective identity.

These two international covenants also oblige States Parties to ensure that women do not experience discrimination in respect of having access to, acquiring and securing housing, land and other property: any denial of women’s equal rights to own, access and control housing and land clearly violates women’s fundamental human rights.

\(^{10}\) ICESCR, Art. 11(1).
LEGAL PROTECTION OF WOMEN’S HOUSING RIGHTS

Women’s rights to housing, land and other property are protected by international instruments and declarations, by instruments of regional law,¹¹ and by national and local laws.

The international instruments and declarations are the following:

- Universal Declaration of Human Rights (UDHR): Art. 25(1);
- International Covenant on Economic, Social and Cultural Rights (ICESCR): Arts. 11(1) and 2(2);¹²
- International Covenant on Civil and Political Rights (ICCPR): Arts. 3, 17 and 26,¹³ as well as General Comment No. 28;
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Arts. 14(h)(2), 15, 16(1)(c) and (h);¹⁴
- Convention on the Rights of the Child (CRC): Art. 27;¹⁵
- Beijing Declaration and Platform for Action: paras. 8 & 36, 26 & 35, and 65(b);¹⁶
- Habitat II Agenda and Platform for Action: paras. 25(a), 26, 27, 40 and 46;¹⁷
- UN Commission on Human Rights Resolution 2005/25 ‘Women’s equal ownership of, access to and control over land and the equal rights to own property and to adequate housing’;¹⁸
- UN Commission on the Status of Women Resolution 42/1, ‘Human rights and land rights discrimination’;¹⁹ and
- UN-HABITAT Governing Council Resolution on Women’s Role and Rights in Human Settlement Development and Slum Upgrading.²⁰

¹¹ For example: the American Declaration on the Rights and Duties of Man, Art. 23; and the African Charter on Human and Peoples’ Rights, Art. 14.
¹² Art. 11(1) protects the right to adequate housing; Art. 2(2) provides for non-discrimination (1966).
¹³ Art. 3 provides for equality of women and men; Art. 17 protects against unlawful interference in the home; Art. 26 provides for equality of all persons and their freedom from discrimination on any grounds (1966); General Comment No. 28 specifically interprets Art. 3 to include inheritance rights for women (2000).
¹⁴ Art. 14(h)(2) provides for housing; Art. 15 provides for equality; Art. 16 provides for equality in property during and after marriage (1980).
¹⁵ Art. 27 recognises the right of every child to adequate housing (1989).
¹⁶ Beijing Declaration and Platform for Action, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995). Paras. 8 & 36 provide for equality; paras. 26 & 35 provide for equal access to productive resources; para. 65 provides for equal inheritance rights.
¹⁷ Adopted by the United Nations Conference on Human Settlements (Habitat II) in Istanbul, Turkey, 3-14 June 1996, A/CONF.165/1996. Paras. 25(a) & 26 reaffirm the right to adequate housing; para. 27 provides for equal access to housing, land and inheritance; para. 40 provides for legal security of tenure; para. 46 relates to integrating gender in human settlements.
¹⁸ See n. 2 above.
²⁰ Adopted by the Governing Council of the UN Human Settlements Programme, 8 Apr. 2005, HSP/GC/RES/20/7.
1.2.1 Specific provisions protecting inheritance

The United Nations Human Rights Committee, in its General Comment No. 28 (entitled ‘Equality of rights between men and women’) on Article 3 of the ICCPR, clearly obligates States Parties to act to ensure women’s inheritance rights:

States Parties [to the ICCPR] must also ensure equality in regard to the dissolution of marriage, which excludes the possibility of repudiation. The grounds for divorce and annulment should be the same for men and women, as well as decisions with regard to property distribution, alimony and the custody of children. **Women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses.**

States Parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the foremost international treaty on gender equality, are obligated to take measures to combat discrimination against women. These include embodying the equality principle in their national law – in particular, constitutions, adopting legislative and other measures against discrimination, and establishing legal protection of the rights of women on an equal basis with men. In the spirit of General Recommendation No. 25 on CEDAW, these obligations have been interpreted to imply that States should take affirmative action or positive discrimination measures when simple non-discrimination or de jure anti-discrimination standards prove insufficient.

Importantly with regard to the issue of inheritance rights, CEDAW requires States:

To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

CEDAW recognises that a variety of factors impact on inheritance and housing rights, and urges States Parties to eliminate those prejudices and customary practices that are based on the idea of “the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women ...”. This issue of customs and traditions is highly relevant to women’s inheritance rights, especially in dual legal systems. With regard to inheritance rights, Article 16 of CEDAW provides that:

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: ... (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

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21 The UN Human Rights Committee monitors State Party compliance with the ICCPR. General Comments (also called General Recommendations) are issued periodically by all the UN human rights treaty-monitoring bodies and are widely regarded as authoritative legal interpretations of the rights contained in the respective Covenant or Convention.

22 In other words, divorce must not be granted solely on the grounds that a husband has rejected or disowned his wife, which is still possible in certain States even though a wife cannot obtain a divorce through rejecting her husband.

23 Para. 26 of General Comment No. 28, UN Doc. CCPR/C/21/Rev.1/Add.10 (2000), adopted by the Committee at its 1834th meeting (68th session), on 29 Mar. 2006.

24 Adopted by UN General Assembly Res. 34/180, of 18 Dec. 1979, entered into force 3 Sept. 1981. To date, CEDAW has been signed by 98 countries and ratified by 175 countries, including the vast majority of sub-Saharan African States (excluding Swaziland).

25 The UN Committee on the Elimination of Discrimination against Women (CEDAW), the body that monitors State Party compliance with the Convention also identified by the acronym CEDAW) adopted General Recommendation No. 25, which relates to Art. 4, para. 1 of CEDAW, on ‘temporary special measures’. The recommendation explains that such measures are to be used to accelerate the improvement of the position of women to achieve equality with men, in all areas of rights. Special measures in the form of legislation and/or public education programmes on women’s equality play a vital role in furthering women’s rights to inherit housing, land and property.

26 CEDAW, Art 21(f).

27 In other words, whether property be given away or be sold.
The United Nations Committee on the Elimination of Discrimination against Women, the body that monitors State Party compliance with CEDAW, has also issued General Recommendation No. 21 on ‘Equality in marriage and family relations’, which states that:

There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband's or father's property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased’s property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention [CEDAW] and should be abolished.28

Thus inheritance rights – in particular, equal inheritance rights for men and women – are explicitly and fully protected under international human rights law. Housing and land rights for all underpin the right to inherit, and the rights to equality and non-discrimination reinforce this right for women. Women are entitled to inherit as men are, because they are entitled to own, access and control land and housing as men are. There can be no justification for any form of discrimination in this area.

1.2.2 International declarations

The Beijing Declaration and Platform for Action,29 which resulted from the 1995 Fourth World Conference on Women in Beijing, China, reiterates these concerns and calls upon States to:

Undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technologies.30

The Istanbul Declaration and Habitat Agenda31 of 1996 uses identical wording to define States' obligations with respect to women's housing and inheritance rights.

1.2.3 Regional instruments

1.2.3.1 North African region

Governing the States in the North African region is the African [Banjul] Charter on Human and Peoples' Rights32 (the ‘African Charter’). Like other international and regional human rights instruments, it implicitly protects the right of women to non-discrimination on the basis of sex and recognises their right to equality before the law. Article 2 of the African Charter states that:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status. [Emphasis added.]

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29 See n. 16 above.
30 Para. 63(b).
31 See n. 17 above.
Furthermore, the African Charter explicitly states that, as stipulated in international declarations and conventions, States should eliminate every discrimination against women and ensure the protection of their rights.33

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa34 is a vital step towards raising the status of women. It specifically protects women’s rights to equal access to housing and to acceptable living conditions, and prohibits discrimination in this area on the basis of a woman’s marital status:

To ensure this right, States Parties shall grant to women, whatever their marital status, access to adequate housing.35 [Emphasis added.]

Moreover, the Protocol specifically recognises women’s right to inheritance, and in Article 21(1) stipulates that:

A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.

Under Article 21(2), women (and, by implication, girls) are ensured the right to inherit their parents’ property in equitable shares with men (and, by implication, boys). These are groundbreaking provisions in that they unequivocally articulate the right of women to inherit, independently of provisions on equality and non-discrimination.

1.2.3.2 Arab/Middle East region
Several human rights instruments guide the actions of States in the Arab/Middle East region. Although the instruments described in this subsection lack enforcement mechanisms, they do constitute a powerful statement of unified thinking on human rights for the region. They should be referenced and utilised to the fullest extent possible. At the very least, they establish a persuasive doctrine.

In May 2004, the League of Arab States endorsed a new human rights charter for the region.36 This is the revised (modernised) version of the Arab Charter on Human Rights, which was originally adopted by the League in 1994. Article 3 of the revised Arab Charter protects the right of all to equality; all are to enjoy the rights and freedoms set forth therein, without distinction on grounds of sex:

(c) Men and women have equal human dignity and equal rights and obligations in the framework of the positive discrimination established in favour of women by the Islamic Shariah [Shari’a] and other divine laws and by applicable laws and international instruments. Accordingly, each State party pledges to take all the requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment of all the rights set out in this Charter.

33 African Charter, Art. 18(3).
34 Adopted July 2003, entered into force Nov. 2005 (upon the 15th ratification).
This article affirms that women and men are accorded equal rights, subject to the *Shari'a* — the body of Muslim law, which is largely based on Islamic teachings, as well as Arab traditions, and which governs most of the Middle Eastern and North African (MENA) States. The revised Arab Charter refers to the rights of women under the *Shari'a* as “positive discrimination”, inferring that the *Shari'a* gives women rights that men do not have. Furthermore, Article 3 stipulates that:

(b) The States parties to the present Charter shall take the requisite measures to guarantee effective equality in the enjoyment of all the rights and freedoms enunciated in the present Charter so as to ensure protection against all forms of discrimination ...

This is a very important provision, using stronger language than that found in many international instruments. The key question is: who is to judge what is “effective” in the context of equality?

The revised Arab Charter also protects the right of everyone to own and retain private property (Article 31), as well as her/his right to an adequate standard of living for “himself and his family, that ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment” (Article 38). States Parties are obligated to “take the necessary measures commensurate with their resources to guarantee these rights” (Article 38). This language goes further than that of the International Covenant on Economic, Social and Cultural Rights (examined in Subsection 1.2, above).

Also in 2004, the Organisation of the Islamic Conference passed its Covenant on the Rights of the Child in Islam, which expressly protects the equality of children, regardless of sex, to enjoy their rights and freedoms.

Finally, the Cairo Declaration on Human Rights in Islam, adopted by the Nineteenth Islamic Conference of Foreign Ministers, guides Member States in all aspects of life. It states in Article 1 that all men (by implication, all persons) are equal in terms of basic human dignity, as well as in terms of basic obligations and responsibilities, regardless of, *inter alia*, sex. Article 6 of the Cairo Declaration on Human Rights in Islam states that:

(a) Woman is equal to man in human dignity, and has her own rights to enjoy as well as duties to perform; and has her own civil entity and financial independence, and the right to retain her name and lineage.

Article 6(b) states that “[t]he husband is responsible for the maintenance and welfare of the family”. Thus, Article 6 is contradictory in that it upholds woman's independence, yet places her under a husband's care.

Despite this shortcoming and the lack of enforcement mechanisms mentioned above, we can conclude that the Arab/Middle East region has a sound basis of human rights instruments that should serve to guide States in establishing laws and policies to protect women's human rights.

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37 Commonly, though erroneously, referred to as the ‘Organisation of Islamic States’.
38 Session of Peace, Interdependence and Development, held in Cairo, Egypt, from 31 July to 5 Aug. 1990.
### 1.3 INHERITANCE RIGHTS UNDER ISLAM-INSPIRED LAW

The basic precepts of inheritance for Muslims are set forth in the Qur’an, the fundamental book of religious teachings in Islam. These teachings – along with Islamic scholarship, Arab law and traditions – inspire the Shari’a, the system of laws to which Muslims adhere. The Shari’a is a synthesis of Qur’an, sunnah (teachings drawn from the life of the Prophet Mohammed), fiqh (Islam-inspired jurisprudence, or interpretation of laws) and Arab traditions. The Shari’a relates to many different aspects of religious, political, social and private life. What is often referred to as ‘Islamic law of inheritance’ is actually a continuing process of interpreting the complicated rules and principles that govern inheritance under Islam.\(^{39}\)

This is a complex and dynamic system, a detailed explanation of which lies beyond the scope of this publication. However, in order to analyse the practice of inheritance in the MENA region, one must at least have a basic understanding of the system of religious tenets and prescriptions that constitute Islamic inheritance law.

Basically, the distribution of estates after death is governed by the Qur’an, primarily verses 11, 12 and 176 of Surah Al-Nisaa (the fourth chapter, on women). Although other verses relate to the issue of inheritance, none of them deal in detail with the distribution of estates.

The Shari’a (body of law inspired by Islam) makes no distinction between religious and secular life. According to Islamic scholars, the Shari’a is drawn from two primary and two secondary sources. The primary sources are the Qur’an and the sunnah (the way the Prophet Muhammad lived his life); the secondary sources are the qiyas, or extension by analogy of existing laws to new situations, and the ijma, or consensus.

The community of Muslims, the ummah, is required to come together for each to apply his or her own independent thought to reach this consensus. Scholars and religious experts, ulema, play the critical role in building this consensus, as they are the ones who study Islam and therefore have authority over interpreting its representations.\(^{40}\)

Within the Sunni tradition (the largest denomination, or sect, of Islam), there are four schools of thought or fiqh (Islamic jurisprudence); within the Shi’a tradition (the second largest denomination of Islam), there are five. The Shari’a is codified by these various schools of fiqh, which play a major role in studying, interpreting and developing the law according to their own principles. Needless to say, the schools often differ in their interpretations.

#### 1.3.1 Complexities of the Shari’a

The Shari’a, particularly the interpretation and implementation thereof, is heavily influenced by various forces in Muslim society: fundamentalist or secularist; politically conservative or liberal. This is why some Islamic scholars argue that the Shari’a is not infallible, as it is subject to so many different interpretations. Others strongly disagree.

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The Shari'a goes far beyond what Western notions of law are: it covers not only religious practices but also most aspects of day-to-day existence, including political, economic and social life in the private and public spheres.\textsuperscript{41} Shari'a provides guidance on all things necessary for a person's spiritual and physical well-being. The regulations of the Shari'a can be divided into two categories: (1) those on worship and ritual duties; and (2) those of a juridical and political nature. It is interesting to note that all actions of Muslims are divided, in principle, into five main categories: (1) that which is obligatory; (2) that which is meritorious; (3) that which is permissible; (4) that which is reprehensible; and (5) that which is forbidden. In this sense, the Shari'a regulates almost all actions of Muslims.\textsuperscript{43}

1.3.1.1 Distribution of deceased estate

According to the Shari'a, when distributing the property of a deceased person, the following procedures have to be followed in a religious court:

Firstly, a death certificate must be submitted to the judge before he distributes the deceased's property – whether it be lands, houses, shops, money in banks, etc. – among those persons that are named as, and considered to be, legal heirs of the deceased, according to the will and its witnesses.\textsuperscript{43}

The judge then gathers all the named heirs and pronounces his judgment in front of them. If any person has waived her/his right to inherit in favour of another heir, the judge asks if she/he has done this willingly or has received remuneration therefor. Funeral expenses and all debts must first be paid out of the estate. Only then can any will prepared by the deceased be considered and executed.

A will is only valid insofar as it bequeaths less than one third of the estate that remains after funeral expenses and debts have been paid. Anything over one third of the estate cannot be distributed according to the deceased wishes. Instead, it is apportioned to the heirs as stipulated in the Shari'a.

In relation to this, the will may not bequeath any portion of the estate to those already deemed legal heirs by the Shari'a, the rationale being that they are already provided for.

Rights of inheritance depend on three grounds of relationship: marriage, blood relationship, and patronage (wala'). Based on these grounds, Islamic inheritance law recognises three groups of heirs. The first group is outlined in the Qur'an, and is granted specified fractions of the remaining estate (after all debts have been paid and the will has been executed).

This group of obligatory heirs who, as determined by the Qur'an, receive fractional shares of the remaining estate, are called ashab al-fara'id\textsuperscript{45} ('those who are entitled to inherit'). As explained below in this subsection, the fractions vary according to the family structure. There are 12 members of this group: nine are defined in the Qur'an; the other three have been added by qiyas, or extension by analogy.

\textsuperscript{41} Shari'a defined, http://i-cais.com/e.o/sharia/htm
\textsuperscript{42} Zainab Chaudhry, The Myth of Misogyny: A Reanalysis of Women's Inheritance in Islamic Law, 61 Albany L. Rev. 511.
\textsuperscript{43} Distribution of shares according to Islamic rules of inheritance as they apply in the Sunni denomination is explained below in this subsection.
\textsuperscript{44} This term actually denotes the right to inherit from a slave. Traditionally, the wala' would be granted to the master/mistress when he/she freed the slave, if there were no natural heirs.
\textsuperscript{45} An alternative transliteration is: ashab al-furud.
The nine obligatory heirs defined in the Qur’an are:

- mother
- father
- wife (widow)
- husband (widower)
- daughter
- full (germane) sister
- uterine sister
- agnatic (consanguine) sister
- uterine brother.46

The three heirs added by analogy (qiyaṣ):

- maternal grandmother
- paternal grandfather
- agnatic granddaughter (son’s daughter).

The second group, the male agnatic heirs (asaba) of the deceased, includes the son, the agnatic grandson (the son’s son) and the paternal uncle (the father’s brother). This group receives whatever remains after distribution of fixed shares to the obligatory heirs.

The last group, the ‘other/distant relatives’, includes any blood relatives who are not in the first and second groups – for example, the maternal aunt (the mother’s sister) and her daughter(s) – but still have the right to inherit, provided that there is no surviving member of the other two groups.

(See textbox on p. 12.)

Members of the Sewing Group in the Imce Cooperative, near Istanbul, Turkey, Oct. 2004. Imce is women-run, and also hosts a nearby community centre.

46 In this particular context, ‘germane’ means ‘having the same father and mother’; ‘agnatic’ or ‘consanguine’ means ‘having the same father but not the same mother’; ‘uterine’ means ‘having the same mother but not the same father’.
WITHIN THE SUNNI TRADITION,\textsuperscript{47} THE VARIOUS DIVISIONS OF THE INHERITANCE AS LAID DOWN IN THE QUR’AN ARE INTERPRETED AS FOLLOWS:\textsuperscript{48}

The children’s shares:
- If there are several male and female children, the inheritance is divided according to the rule that the male receives twice as much as the female.
- If, along with children, the deceased has spouse(s) or parents, they inherit first (according to the fractions stated below); the children receive what remains, with the male(s) getting twice as much as the female(s).
- If there is an only child who is male, he receives the whole inheritable estate; if there is an only child who is female, she receives half of the inheritable estate.

The parents’ shares:
- If the deceased leaves children, the mother and father both receive one sixth.
- If the deceased leaves no children, the mother receives one third and the father two thirds.
- If the deceased has two or more siblings, the mother receives one sixth, the father five sixths and the siblings nothing.

The husband’s share:
- If the wife dies and leaves no children, the husband receives one half.
- If the wife dies and does leave children, the husband receives one quarter.

The share/shares of the wife/wives (NB: if there is more than one wife, each receives an equal share of the allotment):
- If the husband dies and leaves no children, the wife/wives receives/receive one quarter.
- If the husband dies and does leave children, the wife/wives receives/receive one eighth.

The shares of uterine brothers/sisters:
- If the deceased has one brother/sister from the same mother, he/she receives one sixth.
- If there are two or more brothers/sisters from the same mother, they together receive one third.

The shares of full or agnatic brothers/sisters:
- If the deceased has brothers/sisters from the same two parents or only the same father, the inheritance is divided according to the rule that the male receives twice as much as the female.

Personal status codes are sets of laws that deal with everyday family life. Though not necessarily religious in nature, more often than not they do have a religious background: either they are directly derived from a religion or they are based on the precepts of one. The Shari’a is arguably the world’s most famous personal status code, and, when it comes to women’s rights, its most infamous as well.

\textsuperscript{47} The Sunni interpretation is cited as an example only. Equally valid interpretations exist within the other Muslim sects, including the Shi’a tradition.

\textsuperscript{48} Based on COHRE interviews with Sheikh Bassam Al-Kawasmei, Sunni imam and Islamic scholar, in Amman, Jordan, July-Aug. 2004. See also: The Book Pertaining to Inheritance (online article), Muslim Access, http://www.muslimaccess.com/sunnah/hadeeth/muslim/011.html
1.3.1.2 Traditional justification of the 2:1 ratio in favour of male heirs

Islamic scholars not only have an explanation for the fact that, in most cases, males inherit twice as much as females; they also maintain that this system is fair and just. The reasons given for this 2:1 ratio are based on a Shari'a rule that states that men are duty-bound to maintain their families, whereas women are under no such obligation. Any financial contribution that a woman makes to her family or even to her own maintenance (for her basic needs) is considered superfluous and remains her own property. The detailed justification is as follows:49

1) Pursuant to the Shari'a, maintenance of the family – including all financial needs, housing, education, healthcare and personal care – is the exclusive duty of the husband and/or father.

2) A man's financial obligations, and therefore his financial requirements, are much more than those of a woman. For example, a father pays for his children's education and the medical expenses of his wife and children, without the aid of his wife.

3) In order to marry, a man has to pay 'dowry' – more accurately, bride price (mahr) – to his wife-to-be. Once married, he is further obligated to pay for his wife's housing, food and clothing, plus that of any children they may have.

4) A woman has all her needs taken care of, her personal maintenance is not her own duty. That falls on her father, brother, son or other male relative. If she is married, it falls on her husband.

5) The woman is under no obligation to maintain anyone, whereas the man is obligated to maintain his immediate family, more distant relatives, and others.

However, the current reality in the MENA region is that women are contributing a great deal to the household finances, because of the increasing economic strain on families. If women contribute to the family on at least equal terms with men, they should inherit from it equally too. Furthermore, the harsh reality is that men often do not maintain their wives or other female family members as is required of them by law. Why, then, should they continue to benefit from this traditional system? This is further discussed in Section 2 with regard to country-specific situations, and more generally in Section 3.

1.4 OVERVIEW OF INHERITANCE IN THE MENA REGION

The extent to which the Shari'a is observed and implemented varies considerably from country to country within the Middle East and North Africa (MENA) region.

In Turkey, which has instituted secular law even though the majority of the population is Muslim, women and men inherit property on equal terms – at least, pursuant to the law. In other countries in the region, strong women's movements are pushing for changes to existing laws that govern personal status and inheritance, in order that secular law providing for equality of inheritance between men and women be adopted. Tunisia is one such country.

In Jordan and other Islamic countries that some regard as being the more conservative ones, the Shari'a forms the basis of laws governing almost all aspects of life, including criminal law in some countries.50 In those countries, reforms to such laws are not foreseen in the near future.

Unfortunately, throughout the MENA region, the reality seldom reflects the ideal that is laid down in the law, whether secular or religiously based. Although Turkey has equal inheritance on its statute books, its women report far less satisfactory experiences than might be expected. Similarly, in Jordan, many women do not even receive the minimum share laid down in the Qur'an (that is, half the man's share) – often, indeed, they receive nothing at all from the deceased's estate.

49 See n. 40 above.
50 For example, Iran, Kuwait and Saudi Arabia.
In August and September 2004, the COHRE Women and Housing Rights Programme (WHRP) travelled to four countries in the Middle East and North Africa – Jordan, Kuwait, Tunisia and Turkey – to investigate the realities ‘on the ground’. There were two key questions: (1) Are women realising their right to inherit equally as determined by international human rights standards? (2) Are women even realising their right to inherit unequally with men as laid down in the Shari’a?

The COHRE fact-finding mission revealed that most women were not enjoying their human right to equal inheritance, nor their right to inherit in accordance with the (Islam-inspired) laws of their countries.

1.4.1 Harsh reality

A range of factors contribute to this widespread denial of women’s inheritance rights. As described in Subsection 1.3.1, above, under the Shari’a, which is the primary legal basis for inheritance in the MENA region (though culture and tradition play a huge role as well), women – in particular, girl children and widows – are not entitled to the same share as their male counterparts. Not only is this an inequality, it often amounts to enforced poverty when women are left with a share that is too small to sustain them.

Yet laws and their application, correct or otherwise, are not the only contributing factors. One of the strongest and most ‘effective’ obstacles to women receiving their fair share, or even an adequate share, of the inheritance is the combination of social stigma and family pressure. Many women are coerced by family members to give up most, if not all, of their inheritance in favour of male relatives. Women are often threatened with the prospect of being ostracised or disowned by the family if they do not sign an agreement waiving their right to a share of the inheritance.

Families and communities often fear that it is inappropriate for a girl to be given property because she will eventually marry and leave her natal family to become part of her husband’s family. Thus, if she takes any property with her, she essentially removes it from her family to a new family. This fear is strongly related to a traditional way of thinking that stems from the region’s largely tribal past.

Similarly, a male child is expected to grow up, marry and have children. In marrying, however, a young man is considered to be maintaining his own family line (because such societies are patrilineal), so the family’s wealth remains ‘in the family’. In a broader, traditional context, he is, in essence, maintaining the wealth of the tribe.

In addition, as described in Subsection 1.3.1.2, above, according to tradition (as well as law and thinking inspired by Islam) the husband is regarded as having the key role of providing for his family’s well-being. Therefore, it is argued, males are more suitable recipients of the family inheritance.

Women who seek their rightful inheritance are often accused of bringing shame on the family, and are threatened with ostracism from it if they pursue their claim. As societies in the MENA region are generally formed around strong family bonds, threats of being disowned by one’s family are taken very seriously.

Frequently, women who lay claim to their rightful inheritance are subjected to violence — both emotional and physical. In some cases, such women have even been killed, with the family claiming this as a so-called ‘honour killing’. 
1.5 EFFECTS OF DENIAL OF INHERITANCE

Denial of inheritance rights can have a severe impact on women. Detailed testimony obtained by the COHRE Women and Housing Rights Programme (WHRP) from women in several Jordanian, Tunisian and Turkish communities revealed the psychological trauma and dire economic straits faced by women who had been denied access to their rightful inheritance. Such women, after being cheated out of their inheritance or denied their right to housing and land, have no choice but to live in inadequate housing, unable to care properly for themselves or their children. If women are unable to legally own, control and inherit property, they have little economic and personal autonomy because they fundamentally lack access to wealth.

Religious law such as the Shari’a mandates that women be taken care of by a male relative. However well-meant this provision may be, it robs women of their independence and breeds a potentially dangerous dependency. Throughout the MENA region, violence against women in the context of inheritance-related disputes reflects their low status. Some women told the WHRP that they had been subjected to vilification and public shaming after claiming their rightful inheritance. Others reported physical violence against, and even the murder of, those who had tried to claim their rights.

Unfortunately, discrimination abounds, not only in customary systems. Traditional justice systems are patriarchal in nature and fail to provide for, or even fully recognise, women’s rights. As illustrated by Subsection 1.3.1.2, above, women’s rights are not accorded the same value and importance as men’s because women’s needs are generally classified as secondary: a woman is usually regarded as a ward of a male, whether he be her husband, father or other male relative. This notion translates into extreme difficulty for women to access mechanisms that are supposed to protect human rights, such as the formal courts, informal traditional structures, police or other law-enforcing authorities, and administrative systems.

Women who have no control over the family housing in which they live and are unable to access housing independently are liable to face homelessness and deprivation at any time. Especially in the MENA region, where housing and family finance is seen as an exclusively male preserve, a woman is completely dependant for access to housing upon her relationship to a male – usually, either her husband or her father. Rarely are women able to obtain housing and land in their own right. Such dependency is a ripe breeding ground for subordination and violence. Women have no say in decisions over the household, of which the male customarily and legally is the head. Wives owe a duty of obedience to their husband — placing them, in effect, at his mercy. Measured against the global average, the region’s domestic violence rates are high.

Women’s economic contribution to their families, which is vital for their survival, remains unremunerated and invisible. It is not considered at all when inheritance determinations are made because, according to the cultural norms and the religion-based laws that prevail in the MENA region, women have no duty to contribute to the household — even though there are mounting economic pressures on women to do so. The downside of this lack of obligation to economically support the household is the perception

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that women therefore neither need nor deserve to share in the inheritance. The impact is devastating for women, who are, in effect, denied their share in the household to which they have contributed all their life. Their contribution is simply not acknowledged.

The WHRP's fact-finding mission to the MENA region showed that the difficulties associated with loss of inheritance are compounded by the difficulties women in such countries face in finding employment or living independently following divorce or the death of a spouse. Although some women accepted this state of affairs as inevitable, others spoke of their strong desire for change and proposed a range of strategies to achieve it, including the creative use of media such as television.

Even in those cases where women are given their share, they are at the mercy of the relatives who have ‘allowed’ them to receive that share. A woman in such a situation may be forced to play an even more subservient role in the family, making her even more vulnerable to ill treatment at the hands of her relatives. Furthermore, abandonment is a very real possibility as a woman ages and is seen as no longer being worth maintaining.

It would be an understatement to say that the political will to make a change for the better is lacking. Patriarchal governments hide behind religious laws, or cite culture and/or tradition, when the reality is that women's rights are being systematically denied — often by use of force and violence. Relatives abuse widows with impunity; their actions are regarded as ‘family matters’, falling within the private sphere, not subject to public scrutiny or censure. For this reason, police and other authorities are often lax, or unwilling to intervene.

Many women are unaware of their rights and/or fear attracting disfavour or retribution from family members or the wider community. They tend to comply with the demands placed on them and are coerced into abandoning their share of the inheritance.

The violence that women may experience upon the death of their spouse is critical to understanding the intense cultural reverberations of the inheritance question. It highlights the deadly seriousness of the context in which women must decide whether to fight for their rights or bow to convention. Either way, women pay a very high price. Faced with the choice between violence and ostracism on the one hand, and dependence and hardship on the other, many opt simply to maintain the status quo, forfeiting their inheritance rights in the process.

As is the case with so many human rights of women that are systematically violated, the terrain on which women's rights advocates must wage their struggle for the recognition of women's inheritance rights is culture and gender. Time and time again, the WHRP team found that cultural barriers to women's inheritance rights, even where legal standards were in place prohibiting discrimination against women, presented major obstacles to their equality in the area of inheritance. For example, in many traditional societies, men are allowed to take multiple wives, though women are not allowed to take multiple husbands. In terms of distribution of property and wealth, such polygamous systems disadvantage women.

Unfortunately, as is the case with many women's human rights issues, culture is often misappropriated and misused as a justification or pretext for the subjugation of women. Inheritance rights are no exception in this respect. To fight for the inheritance rights of an individual woman is often viewed as an affront to culture and tradition. Women are made to feel that to do so runs counter to their own culture or even their own religion: to fight would be extremely shameful, to the point of sacrilege.

As the country reports in Section 2 show, women are often denied even that small share to which they are entitled, through family pressure and coercion, even physical force. Because women are regarded as being unworthy of receiving their inheritance, such denial – often on supposedly religious grounds – is rife. This blatant misinterpretation and misapplication of religion not only denies women their rights as enshrined in the religious law, but also their internationally recognised human rights to inheritance, housing and land.
1.6 WAY FORWARD

Not even women’s rights groups fully agree on the question of which potential solutions should be applied to the problem of unequal inheritance, nor on how to achieve them. Some women argue that the highest priority must be to stop men misusing their economic and social power and coercing women into giving up their entire inheritance. This would be achievable through rigorous application of the Shari’a — thus targeting traditional practices rather than the Shari’a itself. Others argue that change needs to go further, with women and men being given formal and actual equality in inheritance law — something that would require reform of the Shari’a as it now stands. Many women place the problem of unequal inheritance rights in the broader context of women's status in Islamic society, arguing that until women are accepted as full citizens, able to participate in every aspect of life on an equal footing with men, the discriminatory laws and practices affecting inheritance rights will remain.

The question of how such changes are to be brought about is a highly sensitive one. Many Arab women, including those advocating change, are uncomfortable with the notion of Western attitudes and practices being imposed on non-Western cultures as a panacea for what are perceived in the West as problems. Indeed, some critiques of women's status in Islamic society arguably descend into anti-Muslim hysteria and racism. The potential role of international human rights law in bringing about change in Islamic societies is also controversial: whereas some see such law as a specifically Western construct, others advocate its universal application. Pragmatists argue that Islam and international human rights must engage with, and inform, each other through dialogue. Most of those involved in such debates in North Africa and the Middle East agree on the principle that change must be decided on, and initiated, by those whom it affects, rather than by outsiders.

COHRE firmly believes that international human rights law is a good starting point for such change — provided that it can be promoted collectively with communities and their representatives in the MENA region, and with respect for all those involved, as well as their culture, traditions and religious beliefs. COHRE takes a highly participatory approach to change: it engages with governments, civil society and other organisations in attempting to find solutions based on human rights law, not as a Western construct, but as a set of principles for universal human dignity, peace and security of the person.

1.7 OVERVIEW OF EIGHT STATES IN THE MENA REGION

The denial of women’s inheritance rights is not restricted to any particular world region. Neither the Americas, Europe, Africa nor Asia can claim that women’s rights to inherit property are guaranteed, or even respected, on their soil.

The present publication is the second in a series that COHRE is planning to release on the issues of inheritance rights. The first, entitled Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women: A Survey of Law and Practice in Sub-Saharan Africa (published in 2004), revealed similarly shocking realities for women in southern Africa, where inheritance rights denials are so commonplace that they have been given a nickname: ‘property-grabbing’.

In the MENA region, inheritance rights denials are just as prevalent and extreme, though perhaps a little less blatant. The societal demands and family pressures that play a large role there are often cloaked in custom and religion. The inheritance laws in the region certainly embody inequalities, yet they are not the only reasons for the denial of inheritance rights. The problem is that laws based on religious prescriptions, such as those that are applicable in the MENA region, are open to interpretation and are therefore deliberately misinterpreted to deny women their rights.
Furthermore, because they are based on religious prescriptions, the laws and the conventional misinterpretations thereof are often regarded as set in stone and unassailable. The laws that prevail in the MENA region today were, to a large extent, written at a time when society and its culture were completely different — when people lived in tribes and women were regarded as mere chattels. The Qur'an, in codifying limited inheritance rights for women, was clearly revolutionary: before then, only men had been entitled to inherit. Now, society and culture having changed drastically, many people argue that the religious prescriptions should be re-interpreted in line with the changes. However, traditionalists and fundamentalists – often to preserve the status quo – say that the prescriptions cannot possibly be re-interpreted; they even use them as justification for ever-greater discrimination against women.

Resolving this hugely controversial dilemma is beyond the scope of this publication, which seeks nothing more than to objectively examine the current situation of women's inheritance rights in the Middle East and North Africa and to make recommendations for positive change. In the process, this publication analyses a variety of women's inheritance issues from a human rights perspective. The principle underlying the analyses – indeed, the very foundation of human rights – is that all people are created equal and the law should therefore be applied to all in a non-discriminatory way.

This publication may be critical of certain aspects of laws and realities in the MENA region that some see as being divinely ordained or part of the natural order; it may present ideas that seem to be at odds with the region's religious or cultural dictates. However, the aim is not to criticise or judge the religion or culture itself, but to expose violations of women's human rights and attempts to undermine women's struggle for greater self-determination, respect and independence. This publication seeks to put all judgement aside and objectively examine the realities that women face vis-à-vis their inheritance rights. The aim is neither to offend nor defend any aspect of the region's religion or culture. If any aspect is found not to be in accordance with fundamental principles of human rights, that is pointed out; conversely, if conformity with such principles is found, that too is indicated.

The core issue here is human rights, and women's enjoyment of them on equal terms with men. Surely, human rights are the foundation of all humanity?

1.7.1 Background and structure of this publication

Any discourse that touches upon core issues of religion and culture, however remotely, is bound to be a sensitive one. For this reason, the COHRE Women and Housing Rights Programme (WHRP) decided not to comment directly on inheritance rights in the MENA region but to ask local experts to do so. The WHRP asked eight NGOs, one in each of the eight chosen focus countries in the region, to prepare the relevant subsections of Section 2 themselves, using their own voice and their own style, to reflect on what is important to women locally. These organisations were asked to highlight legal and cultural issues affecting women's inheritance in their countries, and to analyse the real situation, either through case studies or general discussion. Thus, the styles and emphases of the relevant subsections are varied. This clearly reflects the fact that inheritance, though uniform in Islam-inspired law throughout the region (except for Turkey, which has secular law) is not uniform in its application and impacts on women.

For the most part, the WHRP added nothing to, and took nothing away from, the country-specific subsections. Only in respect of relevant situations in countries visited during its fact-finding mission of September and October 2004 did the WHRP make any substantive additions to the texts, inserting testimonies ‘from the field’ where appropriate.
Section 3, *Obstacles and challenges to women’s inheritance in the MENA region*, ties together some of the themes, especially those concerning the obstacles women face in claiming their rights, and summarises the issues that the country-specific subsections of Section 2 examine. Section 4, *Denial of inheritance rights: different regions, same excuses*, draws comparisons between the MENA region and sub-Saharan Africa — and shows that women’s experiences of inheritance in these two, quite distinct, regions are surprisingly similar.

Finally, Section 5, *Strategies and solutions*, and Section 6, *Conclusions and recommendations*, attempt to give directions for the way forward, for positive changes to improve the lives of women in the MENA region and those that depend upon them.

One inescapable conclusion of this publication is that women’s inheritance rights are violated by many actors and for many reasons. Ultimately, however, the State bears responsibility for protecting human rights, for ensuring that the right of women and girls to inherit on equal terms with men and boys is not undermined. This right is embedded in the right to housing and land. The obligation of States to protect the women’s right to housing and land neither begins nor ends with inheritance, for this is a fundamental right of women that must be respected, protected and fulfilled by States without exception and without excuse. This requires not only political will, but also decisive action for change, based on internationally accepted human rights principles.

The following section examines eight States of the MENA region and determines the extent to which they have or have not fulfilled their human rights obligations in this respect.
COUNTRY REPORTS
2.1 EGYPT

2.1.1 Introduction

2.1.1.1 Overview of Egyptian State and society

Egypt is an Arab republic with Islam as the State religion. It is Africa’s second most populous country with 77 million people (2005). About twenty percent of the total population lives in Cairo, Africa’s largest city with over 15 million people. The majority of Egypt’s population is Sunni Muslim, but a significant minority (six percent) is Christian, largely belonging to the Coptic Orthodox Church. The country gained independence from the British in 1922. Its legal system is based both on the Shari’a (the body of law inspired by Islam), and on the French civil law system. The Constitution identifies the Shari’a as the primary source of legislation. Religious law governs personal status or family law, including marriage, child custody, divorce and inheritance.

EGYPT’S HOUSING PREDICAMENT

According to the Habitat International Coalition – Housing and Land Rights Network (HIC-HLRN), inadequacy and shortage of housing is currently one of Egypt’s most acute problems. Due to Egypt’s geography, the vast majority (96 percent) of the population lives in the Nile Valley and Delta. Excessive population density therefore plagues the cities, towns and villages in the settled areas along the banks of the Nile.

The basic issue nationwide is an overwhelming lack of affordable housing for the poor and for low-income middle class families. Ironically, an estimated three million apartments are unoccupied, which is roughly equal to the number of Egyptian families that are inadequately housed. One of the root causes of the massive spread of informal settlements over the past few decades, particularly in Cairo and Alexandria, is the concentration of job opportunities and services in the major cities, which attract migrants from the rural areas. While the State has attempted to develop a number of so-called ‘new cities’ outside the over-populated regions, these provide insufficient jobs, facilities and affordable housing and therefore remain largely under-occupied.

One peculiar phenomenon in Cairo is that of people living in cemeteries; some sources estimate that over 1.5 million persons live in these ‘Cities of the Dead’. Reports of forced evictions in Cairo often describe violent confrontations between police and the affected citizens. Despite Government claims to the contrary, evictees do not receive compensation, replacement housing or any other form of assistance. Widespread homelessness of children and young persons is of particular concern to the Government and human rights organisations.

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52 This country report (Subsection 2.1) was prepared by Azza Soliman and Mahmoud Abdel Fateh of the Centre for Egyptian Women’s Legal Assistance (CEWLA), Giza, Egypt.
55 CIA World Factbook (n. 53 above).
58 http://www.megacitiesproject.org/network/cairo.asp
59 Ibid.
60 Ibid.
61 Ibid.
65 Ibid.
2.1.1.2 Social, cultural, political and economic obstacles to women enjoying equal inheritance rights

Over the past few decades, women in Egypt have made significant advances in society, though corresponding changes in legislation often lag behind. Significantly for an Islamic country, women comprise 21 percent of the labour force, with highest employment in the agricultural and service sectors. In the informal sector, the percentage of women workers is even larger.\(^{65}\) Furthermore, 22 percent of all Egyptian households are female-headed.\(^{66}\) Despite this apparent progressiveness, illiteracy rates among women remain substantially higher than for men, an overwhelming majority of girl children are still subjected to female circumcision, and domestic violence and so-called ‘honour killings’ persist as widespread practices. Legal advances are slow in coming: Egypt continues to prohibit Muslim women from marrying non-Muslim men, maintains its reservations to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in reference to the Shari’a, and recently renewed legislation requiring women to obtain their husband’s permission to travel abroad.\(^{67}\)

Traditional notions of women’s roles in society remain strong in many segments of Egyptian society. Concepts of male superiority based on religious interpretations maintain the basic structures of a male-dominated society. The lack of women’s education on their rights, and the corresponding absence of broad public pressure to improve women’s status in society, are compounded by the fact that the Government has little to no political will to work for the realisation of women’s rights. The Government generally attempts to deter the limited efforts in that direction, as they threaten to disturb the existing balances of power and cultural structures that facilitate its rule.

DOMESTIC VIOLENCE AND ‘HONOUR KILLINGS’: COMMON PRACTICES IN EGYPT\(^{68}\)

Domestic violence and ‘honour killings’ are interrelated forms of violence against women that directly stem from the notion that a family’s honour depends upon the sexual conformity of its female members and that men have the right to punish women for ‘improper’ sexual behaviour. A great cause for concern, such violence is often used as a means to force women to give up their property rights or inheritance.

In a study of domestic violence and ‘honour killings’ in Egypt, the Centre for Egyptian Women’s Legal Assistance (CEWLA) found that the two most common types are murder (76 percent) and battering (18 percent). The most common ‘reason’ given for such violence was ‘crimes’ that bring ‘dishonour’ to the family (42 percent); other causes for punishment included the woman leaving the house without the husband’s approval, asking for divorce, or marrying a man unapproved of by the family.\(^{69}\) An ‘honour killing’ is the murder of a woman by male family members for a perceived violation of social norms relating to sexuality, or on suspicion of having transgressed the limits of social behaviour imposed by traditions. In fact, a CEWLA study of ‘honour killings’ revealed that the vast majority (79 percent) were murders of women suspected of committing adultery. The same study showed that three-quarters of the perpetrators of such killings were either the victim’s husband or her father.

Unfortunately, current penal codes and recent judicial proceedings reinforce the notion that men have the right to punish women for perceived ‘crimes of honour’. The most common form of discrimination in the courts is the abuse of Egypt’s Penal Code; specifically Article 17, which grants the judge discretionary power to mitigate the perpetrator’s sentence. In most reported court cases related to ‘honour killings’, Article 17 was invoked to substantially reduce the sentence.


\(^{66}\) UNIFEM press release (n. 65 above).

\(^{67}\) UNIFEM press release (n. 65 above).


\(^{69}\) Ibid.
The judicial system is similarly lenient in cases of domestic violence involving battering and rape. Wife-beating is common throughout Egypt, with one in three married women beaten at least once in their lives. Police rarely take domestic violence charges seriously and judges often try to persuade women to drop their charges. Marital rape is not illegal in Egypt and the Penal Code does not specifically prohibit domestic violence. Indeed, more often than not, judges use Article 60 of the Penal Code, which stipulates that “punishment outlined by the Penal Law does not apply to anyone who committed an action out of good intentions sanctioned by Islamic Shari’a”, to exclude husbands, fathers and brothers from prosecution on domestic violence charges. Given this overwhelming lack of Government commitment to justice for women and the pervasive societal attitudes that sanction men’s disciplining of their wives, daughters and sisters, the topic of domestic violence as a women’s rights violation remains taboo in virtually all areas of Egyptian society.

2.1.2 Equality, inheritance and the law

2.1.2.1 The Constitution

The most recent constitutional change was Egypt’s adoption of the current Constitution in 1971. Articles 8 and 40 guarantee the principles of equality and non-discrimination for all citizens. While the Constitution guarantees equality and freedom of belief, this must be viewed in light of the 1980 amendment to Article 2, identifying the Shari’a as the principal source of law.

The 1971 Constitution also contains several articles regulating public (State-held), cooperative (community-held) and private property. After the 1952 Revolution, the State redistributed and nationalised significant amounts of property. The 1971 Constitution reversed this trend by introducing greater protections for private property. Article 34 states that:

Private ownership shall be safeguarded and may not be put under sequestration except in the cases specified in the law and with a judicial decision. It may not be expropriated except for the general good and against a fair compensation in accordance with the law. The right of inheritance is guaranteed in it.

Article 35 further stipulates that:

Nationalization shall not be allowed except for considerations of public interest, in accordance with a law and against a compensation.

These provisions have allowed for a significant stabilisation of property-regulating laws.

HISTORY OF LAND OWNERSHIP IN EGYPT

Only about three percent of land in Egypt is arable, located principally on the banks of the Nile. Even so, the Egyptian economy depends largely on agriculture and has a long history of land reform. Consequently, land ownership has historically been of great significance in Egypt, granting the owner special rank and prestige in society.

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71 Ibid.
73 Ibid.
74 CIA World Factbook (n. 53 above).
Egypt’s ruler from 1805 to 1848, Mohammed Ali, owned all Egyptian lands during his time in power. Faced with political opposition, however, he rewarded his supporters by granting them ownership of a limited amount of his lands in order to stabilise the nation. Predictably, most of those lands were given to men who physically fought for Mohammed. The only women permitted to own land were female members of the royal family. Thus, until the July Revolution of 1952, a very small minority of the population owned almost all of Egypt’s cultivable lands.

The Revolution led to massive land reforms, which redistributed ownership of Egypt’s cultivable lands among the peasants who worked them. The 1952 Agrarian Reform Law granted set amounts of land to individuals and families, the number of acres granted to a family depending on the number of children. Owners could either farm their lands themselves or rent them to other farmers. The amount of land holdings allowed has been incrementally decreased ever since then. Various legal, social and cultural influences conspired to exclude women from securing independent tenure. Again, land rights went to the men, as tradition dictated that they were responsible for the economic livelihood of the family. The land reform process thus excluded women not only from the redistribution of national wealth but also from attaining the social status of landowner, even though they were actively involved in the cultivation of lands throughout Egypt.

The ownership of houses and buildings was similarly regulated. According to custom, it is the husband’s responsibility to provide the matrimonial home; upon marrying, a woman merely moves from her parent’s/father’s house to her husband’s. Property rights remained the exclusive privilege of men. In the Egyptian countryside, this exclusion from land and property ownership represented one of the worst forms of discrimination against women — yet women living in urban areas were subject to the same inequity. Despite their having contributed to the purchase and maintenance of the family home, they were not officially recognised as owners, in accordance with the traditional notion that all the family’s possessions belong to the husband.

2.1.2.2 National legislation

Theoretically, Egypt’s national laws should respect and conform to the principle of equality between men and women that is guaranteed in the Constitution. However, a number of laws blatantly discriminate against women. They include laws in the Penal Code that provide for more severe punishments for female adulterers than for men who commit the same crime. Furthermore, men who commit ‘honour killings’ receive lighter sentences than those convicted of committing a premeditated murder. Even recent labour laws written specifically to protect female workers contain discriminatory elements, including Labour Law No. 12 of 2003, which sets forth conditions for maternity leave, allowing women no more than two maternity-related periods of absence under the same employer and excluding women who work in agriculture.

2.1.2.3 The Personal Status Laws: marriage, divorce and inheritance

In Egypt, the Shari’a governs family law; that is, personal status law. However, as of 1995, the practice of family law is in accordance with each individual’s religious faith. In this context, the State recognises Islam, Christianity and Judaism. Hence, Muslim families are subject to the Personal Status Laws, Christian families to canon law, and Jewish families to Jewish law. The vast majority of the country’s Christians belong to the Coptic Orthodox Church, which is the indigenous form of Christianity, established in the 1st century AD in Egypt. Today, Coptic Christians are found mainly in Egypt, Ethiopia and Eritrea.

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2.1.2.3.1 Marriage

Under Egypt’s Personal Status Laws, Muslim women have the right to choose their husband but cannot marry non-Muslim men. Non-Muslim women who marry Muslim men are subject to the Shari’a (Islam-inspired law), but are not automatically entitled to all the privileges accorded by that law, one of which is inheritance. Women have to be at least 16 years old to marry, and men 18. Polygamy is legal, with the sole requirement that the husband must notify his existing wives of his intention to marry again and must notify his wife-to-be of the existence of his other wives. Furthermore, women do not have the right to travel abroad without their husband’s consent. Female members of the Coptic Orthodox Church who marry Muslim men are excommunicated. Christians of other denominations who wish to marry a Coptic Christian must first convert to Coptic Christianity.\(^{27}\)

2.1.2.3.2 Divorce

The Personal Status Laws give men the right to divorce without their wife’s consent, whenever they want. However, if the divorce is obtained without cause or the wife’s consent, she is entitled to compensation of at least two years’ maintenance. In contrast, women have to go through court to obtain a divorce from their husband. A new personal status law passed in 2000 makes it easier for Muslim women to get divorced without their husband’s consent, provided that they are willing to give up alimony and the return of their dowry. Nevertheless, divorce proceedings initiated by a woman remain complex and time-consuming processes.

New child-custody laws were enacted in 2005, permitting a divorced mother to have custody of her children until they are 15 years old. A judge can extend this to age 21 (the age of majority in Egypt) or until a daughter marries, if this is deemed in the child’s best interest. Coptic Christianity does not permit divorce.\(^{28}\)

2.1.2.3.3 Inheritance

Inheritance in Egypt is regulated by the rules set forth in the Qu’ran and the Sunnah (‘well-trodden path’, the body of traditional socio-legal custom and practice to which the Muslim community adheres). The Personal Status Laws thus regulate inheritance according to set shares (see Subsection 1.3.1.1, above). Traditionally, male heirs face social pressure to provide for other family members, though this obligation is not always met. The Egyptian Law of Bequest (1946) provides for “obligatory inheritance for descendants of predeceased sons (how low so ever) and daughters.”\(^{29}\) The share of such heirs may not exceed one third of the estate. Significantly, regardless of familial relationship, non-Muslims cannot inherit from Muslims. This restriction applies, for example, to Christian widows of Muslim men.

In reality, many women do not enjoy the inheritance rights bestowed on them by the Shari’a. Throughout Egypt, not only Muslim but also Christian women suffer customary discrimination in relation to their inheritance rights: they are often denied their rightful claims to own part or the entirety of property such as cultivable lands, and buildings including family homes. This problem is particularly prevalent in rural areas, where women face the hardest living conditions.\(^{30}\)

\(^{27}\) Ibid.
\(^{28}\) Ibid.
\(^{30}\) UNIFEM press release (n. 65 above).
2.1.2.4 International human rights treaties
Egypt has ratified most of the major international human rights treaties and covenants, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in October 1981 and the Convention on the Rights of the Child (CRC) in September 1990. However, it has expressed noteworthy reservations regarding both of these treaties. On CEDAW, Egypt submitted a reservation referring to Article 9(2) on gender equality in nationality rights, stating that in Egypt children must acquire the nationality of their father. In a general declaration on areas of conflict between the Shari’a and the CRC, Egypt expressed particular concern about Articles 20 and 21, both of which refer to provisions on adoption.

In November 2002, the United Nations Human Rights Committee, which oversees States’ compliance with the International Covenant on Civil and Political Rights (ICCPR), urged the Government of Egypt to redress the discriminatory effects of its nationality laws — in regard to the transmission of nationality to children when Egyptian women are married to foreigners — and of its inheritance laws. Two years later, in July 2004, the Egyptian Parliament passed a new Nationality Law giving Egyptian women married to foreigners the right to pass their nationality on to their children. However, children born of foreign fathers are still prohibited from joining Egypt’s police or army and from obtaining certain government posts.

2.1.3 Women’s realities

2.1.3.1 The Egyptian woman and cultivable lands
In rural Egypt it is customary for all male and female family members to contribute to cultivating the land. Women help tend the livestock, they sow, plough and harvest the land, and they prepare food for the family. Despite their numerous and varied contributions, women almost never own the land they work on. Although the Shari’a-based succession law entitles women to inherit land, local patriarchal customs prevent them from doing so.

2.1.3.2 The divorced mother/woman
As described above in Subsection 2.1.2.3.2 on divorce, under the new child-custody legislation, a divorced mother has custody of her children until they reach the age of 15. A judge can extend this to age 21 or until a daughter marries. At the end of this custody period, the divorced mother is no longer eligible to receive alimony, accommodation or other maintenance. She must leave the house provided by her husband as soon as the custody period ends.

On divorcing, childless women must leave the husband’s home and return to their parental home — otherwise they would find themselves without shelter. Egyptian society generally views divorced women with suspicion and disapproval, so it is very difficult for divorced women who cannot or do not wish to live with their parents, or whose parents are dead, to find an apartment or house to rent independently. They often have no alternative but to move to the slums or other informal housing.

2.1.3.3 Women who inherit a house or other building
Inheritance disputes tend to arise when women inherit a house or other building, especially if the structure in question is the family home. In such cases, male heirs prevent female heirs from inheriting their rightful share of the residence. Men justify such action by referring to the traditional notion that men, not women, are responsible for providing the family home. In general, matters of this kind are governed and settled according to traditional social norms — not according to the national laws.

82 See n. 79 above.
83 UN Human Rights Committee, ‘Concluding observations of the Human Rights Committee: Egypt. 28/11/2002’, UN Doc. CCPR/CO/76/EGY.
In other instances, a woman's right to inherit a house may be limited to permission to live in the building; she is thus deprived of her rights to sell, purchase or rent out the house — which are linked to her property rights. Another typical case is that of a widow who lives in her deceased husband's family residence. She may reasonably fear moving out of the house to live independently, since such a move can entail the loss of her and her children's inheritance claims to the house. For the same reason, widows may also refrain from remarrying.

2.1.4 Conclusions and recommendations

In Egypt, the issue of inheritance as a women's right is highly contentious, as it is so closely linked to issues of the economy and the distribution of wealth. This linkage makes it particularly difficult for women to secure their inheritance rights. Indeed, to fully realise women's equal inheritance rights in Egypt, it will be necessary to create a better overall social, cultural and political climate for women.

The Egyptian woman is severely restricted by custom and tradition — and by the risk associated with daring to violate such custom and tradition. Women often refrain from demanding their lawful share of inheritance, especially through the court system, because they fear that they will be accused of disobeying their male relatives, ostracised by the family and/or evicted from its property.

Therefore, the Government of Egypt should urgently draft new by-laws and regulations that would empower women to claim their rights through legal channels. In all cases, surviving relatives of the deceased should be legally bound to recognise all rightful heirs and abide by the calculation of their shares in full accordance with the law. Thus, every inheritor could be made aware of his or her rights, and discriminatory acts against women could be curtailed.

One of the strongest obstacles to realising women's rights in Egypt is the lack of awareness of such rights. Most men and far too many women are unaware that international law ratified by Egypt guarantees women rights that are equal to those of men, and that oppression or violence against women is not only morally wrong but also violates women's rights. Indeed, Egyptian culture has not fully accepted women's rights as valid. Throughout Egyptian society, awareness of women's rights must increase, as must the cultural acceptance of women exercising these rights. The Government of Egypt should build awareness of women's rights through information campaigns, the media, and public service announcements. Women's rights should be taught in schools and in religious and other institutions. Women's equality must become a part of day-to-day reality.

The Government of Egypt has ratified most of the relevant international human rights treaties and covenants, especially those that apply to the equal rights of women. It is vital that the Government should take its obligations under these treaties and covenants seriously, and not only develop laws and policies that reflect such obligations but work to implement them, for all women.

The need for this action was confirmed by the UN Human Rights Committee, which, in 2002, made recommendations to the Government to improve the rights of all women, especially as regards nationality and inheritance laws. The Government is to be commended for its progressive laws in relation to the nationality of children of Egyptian women. However, the recommendations on inheritance rights have not yet been implemented. CEWLA and COHRE urge the Government of Egypt to fully apply the Committee's recommendations.
2.2 IRAN

2.2.1 Introduction

The most important event in Iran’s recent history was the 1979 Islamic revolution, which deposed the Shah of Iran and ended centuries of monarchical rule. Once the Islamists had taken control and consolidated their power, the country underwent a sweeping project of Islamisation in the political, social, cultural and legal spheres. In that period, many members of the former elite and wealthy class fled the country, abandoning their land and property, some of which was confiscated by the newly established regime.

The onset of the Iran-Iraq war in 1980 threw the country into further upheaval. Many thousands of people were internally displaced during the eight-year war, with residents of war-torn areas fleeing to major cities. In the capital, Tehran, the influx of war refugees profoundly altered the city’s demographics as the then government housed some of the refugees in specific areas, including in the confiscated homes and hotels of the departed elite. In some of the older neighbourhoods, long-term residents moved out in response to the ‘unsightly’ incursion of poorer refugees. At the same time, the war created a new wealthy class: people who moved out of the older and more traditional neighbourhoods and northwards into the more modern areas of the capital.

In recent years, Iran has become increasingly urbanised, with over 60 percent of the population currently living in cities. Although urbanisation began before the 1979 revolution, the pace rapidly accelerated thereafter. Tehran now hosts people from every region of the country and, depending on the source, has a population of 10-14 million. This trend, combined with a doubling of the country’s overall population within 25 years, has meant that the leadership has had to contend with an overwhelmingly young population (75 percent are less than 30 years old) that is increasingly dissatisfied with the lack of employment opportunities and – especially in the city of Tehran – affordable housing.

By the time the reformist Mohammad Khatami was elected as President in 1997, the war had been over for almost ten years and the post-revolutionary generation was entering their twenties. In 1999, when the reformists were overwhelmingly voted into the Iranian Parliament (the Majlis), many young men and women were eager to test the reformists’ commitment to building civil society and allowing greater social freedoms. Women’s literacy levels and presence in higher education had steadily increased since the revolution. By the late 1990s, more than 50 percent of incoming university students were women. That figure subsequently increased every year, reaching 63 percent in 2004.

During the reformist era, many non-governmental organisations were founded, including women’s NGOs. Newspaper, magazine and book publications greatly increased. The relative openness provided a forum for previously excluded groups to engage in public debate on a wide variety of social and political issues, including women’s legal status, rights, and social participation. At the same time, women activists, legal scholars and reformist Parliamentarians intensified their efforts to enact legal reforms to expand women’s rights, especially in the personal status laws.

After 2004, when the reformists lost control of Parliament to the conservatives, there was mounting fear that the recent social reforms would be reversed. Indeed, the political battling between the reformists and the conservatives has already produced casualties: most notably, more than 100 reformist newspapers and magazines have been shut down since 2000, and scores of writers and journalists have been detained. Now, with Parliament firmly in the grip of the conservatives, non-governmental organisations, women’s activists and writers, as well as many other progressive elements in Iranian society, are far more vulnerable to repressive measures designed to silence reform and dissent.

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85 This country report (Subsection 2.2) was prepared by Mahsa Shekarloo (editor of Badjens Magazine for Women) and Simin Marashi, both women’s rights activists and experts.
2.2.2 State and government structure

Shortly after the 1979 revolution, the country was renamed the Islamic Republic of Iran following a national referendum. Iran’s current legal system is founded on the Ja’fari (or Twelver) school of Shi’a Islam.

The Constitution was amended in October 1979 and put into effect in December of that year. In the first few lines of the Preamble, it states:

The Constitution of the Islamic Republic of Iran advances the cultural, social, political, and economic institutions of Iranian society based on Islamic principles and norms, which represent an honest aspiration of the Islamic Ummah.86, 87

Article 4 (Islamic Principle) of the Constitution, holds that:

All civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations.88

There are three independent branches of government: judicial, executive and legislative (Article 57 of the Constitution). The President and Parliament are elected by the people and the head of the judiciary branch is appointed by the Supreme Leader (often referred to as velayat-e faqih). According to Article 157 of the Constitution, the head of the judiciary must be a just mujtahid,89 knowledgeable about judicial matters, resourceful, and capable of administration. (Because women can also reach the level of mujtahid, they can theoretically serve as head of the judiciary.)

The Supreme Leader holds the supreme political authority in the country and is appointed by the Assembly of Experts. The office of Supreme Leader was introduced in Article 5 of the new Constitution:

During the occultation of the Wali al-'Asr (may God hasten his reappearance), the leadership of the Ummah devolves upon the just and pious person, who is fully aware of the circumstances of his age, courageous, resourceful, and possessed of administrative ability, [and who] will assume the responsibilities of this office in accordance with Article 107.90

In addition to controlling the judiciary and holding the power to dismiss the President and issue decrees, the Supreme Leader appoints six members of the 12-member Guardian Council. This supervisory body has vetting power over all laws passed by the Parliament, in order to ensure that they do not conflict with either the Constitution or the Shari’a. After Parliament passes a bill, the Guardian Council must give approval before that bill can become law. If the Guardian Council rejects the bill, it is returned to Parliament for changes. If Parliament refuses to change the law, then the matter is referred to the State Expediency Council, which will mediate and issue a final decision. The State Expediency Council also has the power to make laws. Although the Parliament, Guardian Council and State Expediency Council are all separate and distinct, the Supreme Leader appoints all the members of the State Expediency Council and six of the twelve members of the Guardian Council.

There is an Islamic Human Rights Commission whose first appointed head was also head of the country’s judiciary.

86 Community of believers.
88 Ibid.
89 Islamic jurist who is qualified to make independent judgments in matters of Islamic jurisprudence.
90 Constitution of Iran (1979) (n. 87 above).
2.2.3 The Constitution

The Constitution was revised in 1989 to eliminate the office of the Prime Minister, amend several articles, and add two chapters.

2.2.3.1 Equality, non-discrimination, and women's rights

The Constitution includes provisions concerning equality and non-discrimination. In Article 19 (No Discrimination, No Privileges), it states:

All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; color, race, language, and the like, do not bestow any privilege.\(^\text{91}\)

It is important to note that the Constitution does not include religion and sex as a basis for non-discrimination.

Equal protection before the law for all citizens is conditioned by the stipulation that the rights must be “in conformity with Islamic criteria” (Article 20):

All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria.\(^\text{92}\)

This protection of the law ‘equally’ afforded to men and women actually rests on the notion of parallel rights, not identical rights. In other words, women and men have their own set of rights. For example, in return for a husband’s legal right to demand sexual intercourse with his wife, she is legally entitled to receive *nafaqeh* (maintenance payments) from her husband.

The Constitution devotes Article 21 (Women’s Rights) to the government’s responsibility *vis-à-vis* women’s rights:

The government must ensure the rights of women in all respects, in conformity with Islamic criteria, and accomplish the following goals:

1) Create a favorable environment for the growth of woman’s character and the restoration of her rights, both material and intellectual;

2) Protect mothers, particularly during pregnancy and child-rearing, and protect children without guardians;

3) Establish competent courts to protect and preserve the family;

4) Provide special insurance for widows, aged women, and women without support;

5) Award the guardianship of children to worthy mothers, in order to protect the interests of the children, in the absence of a legal guardian.\(^\text{93}\)

\(^{91}\) Ibid.

\(^{92}\) Ibid.

\(^{93}\) Ibid.
2.2.3.2 Residence and property rights
There are three articles in the Constitution that provide for the protection of residence and property, including housing and land.

Article 22 (Human Dignity and Rights) provides that:

The dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases sanctioned by law.\(^4\)

Article 31 (Housing) states that:

It is the right of every Iranian individual and family to possess housing commensurate with his needs. The government must make land available for the implementation of this article, according priority to those whose need is greatest, in particular the rural population and the workers.\(^5\)

And finally, Article 33 (Residence) holds that:

No one can be banished from his place of residence, prevented from residing in the place of his choice, or compelled to reside in a given locality, except in cases sanctioned by law.\(^6\)

The stipulation "except in cases sanctioned by law" in Articles 22 and 33 allows for the constitutionality of Article 1114 of the Civil Code, which holds that the wife must live in the residence chosen by her husband. Consequently, if the husband decides to relocate, his wife must follow him; otherwise she will risk being adjudicated delinquent of neglecting her marital duties. If such is the case, her husband can withhold payment of her *nafaqeh*, or maintenance, because he is obligated to provide financial support on the condition that she has performed her marital duties. Alternatively, if a married woman chooses to leave her marriage and live elsewhere, her act can be held against her in divorce proceedings and, again, she will lose her right to financial support because she did not fulfill her marital obligations.

If the wife can prove in court that remaining in the conjugal home threatens her physical or financial well-being or dignity, she is entitled to leave. In such instances, she does not forfeit her right to maintenance and the husband is obligated to provide financial maintenance.

2.2.4 National legislation

As stated above in Subsection 2.2.2, according to Article 4 (Islamic Principle) of the Constitution:

All civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the wise persons of the Guardian Council are judges in this matter.\(^7\)

In addition, Article 72 stresses that:

The Islamic Consultative Assembly cannot enact laws contrary to the official religion of the country or to the Constitution. It is the duty of the Guardian Council to determine whether a violation has occurred.\(^8\)

\(^{4}\) Ibid.
\(^{5}\) Ibid.
\(^{6}\) Ibid.
\(^{7}\) Ibid.
\(^{8}\) Ibid.
Although the Shari’a (body of law inspired by Islam) generally applies to everyone living in Iran and the courts are responsible for enforcing the law, there are exceptions. The personal status laws apply differently to some non-Muslims. Iranian law recognises Christianity, Judaism, and Zoroastrianism as minority religions, each with its own personal status law. On issues concerning inheritance, Zoroastrians are governed by the Shari’a.

2.2.4.1 Recent changes to the law
Several personal status laws have been changed to enhance women’s rights thanks to challenges and pressure exerted by women’s rights activists and some women within the Government. The following are examples of legal reforms to increase women’s rights in marriage and the family:

Civil Code, Article 1130 (1991) – Gives women the right to divorce on the condition that they can prove that continuation of the marriage would cause them hardship (‘usr-o haraj). Some examples of hardship are non-payment of nafaqeh (maintenance), assault and battery of a criminal nature (warranting payment of diyeh, or ‘blood money’), infidelity and neglect, addiction, and abandonment of the family.

Civil Code, Article 1113 (1992) – ‘Ojrat-ol mesl (‘like wages’). Monetary amount to which the woman is entitled if her husband divorces her without reason. The payment is for the wife’s domestic work provided during the marriage.

Civil Code, Article 1082 (1997) – Adjusting mahriyeh (bride price) to inflation. In instances where the mahriyeh is a monetary amount, the value is adjusted to meet the financial indicators at the time of payment.

Civil Code, Article 1173 (1997) – Child protection. If the child’s physical or moral well-being is endangered as a result of the mother’s and/or the father’s neglect or moral depravation, the child can be removed from their care. Examples of neglect and moral depravation include addiction to alcohol and drugs, moral corruption, prostitution, mental illness, child exploitation, and repeated battery.

Civil Code Article 1041 (2002) – The minimum legal age of marriage for girls was raised from nine to thirteen years. Underage marriages require permission from the ward’s guardians and a court of law.

Civil Code, Law of Custody (2003) – In cases of divorce, the mother is granted custody of her children until they reach the age of seven. If the parents cannot reach an agreement about custody after this period, the court will make a decision based on the children’s best interest. (Note: Previously, mothers were granted custody of their daughters until the age of seven and of their sons until the age of two, after which custody was automatically transferred to their father.)

Civil Code Article 1154 (2003) – ‘Eddeh. Entitles women to maintenance payments during the period of four months and ten days that a woman must wait before she can remarry after divorce or her husband’s death.

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99 An ancient Persian religion, Zoroastrianism or Mazdaism is regarded as the world’s oldest monotheistic religion. Today, Zoroastrian communities are found in Afghanistan, India, Iran and Pakistan, and throughout a worldwide diaspora. Zoroastrians in Iran have, like other religious minorities, survived centuries of persecution. Recent estimates by www.adherents.com place the number of Zoroastrians worldwide at around 2.6 million. Some major Zoroastrian concepts include sexual equality in all matters within society, cleanliness of the environment, and hard work and charity. Equality of all humans regardless of gender, race or religion, and respect of everything on Earth and in the world is central to the religion; <a>Wikipedia, The Free Encyclopedia</a>, http://en.wikipedia.org/wiki/Zoroastrianism

100 Marriage and family life is largely dealt with under the Civil Code of Iran. This Code, based on the Shari’a, has undergone several amendments in order to better reflect the realities of women’s lives.
2.2.4.2 Marriage

Iranian civil law recognises two kinds of marriage: permanent and temporary. According to Article 1075 of the Civil Code: “A marriage is temporary when the duration is specified.” In temporary marriage, not only the duration but also the amount of mahriyeh (bride price) must be specified. Temporary wives are not entitled to other forms of financial support, such as maintenance or 'ojrat-ol mesl.

When the pre-determined duration expires, the temporary marriage is automatically dissolved. Only the husband has the power to dissolve the temporary marriage before the expiration date. If he prematurely dissolves the marriage before its consummation, the wife is entitled to half her mahriyeh. If the marriage was consummated, the wife is entitled to the full amount.

Article 1119 of the Civil Code is interesting in that it permits couples to insert stipulations in the marriage contract before signing it, as long as these do not run counter to the nature of the contract:

The parties to the marriage can stipulate any condition to the marriage which is not incompatible with the nature of the marriage contract, either as part of the marriage contract or in another binding contract.\(^{101}\)

For the wife, inserted stipulations often secure rights that are not already guaranteed in the law; for example, the right to live in the residence of her choosing, the right to work, and the right to continue education.

A girl or woman who wishes to marry for the first time legally needs her father's or her paternal grandfather's permission, regardless of her age. Article 1043 of the Civil Code stipulates that if a court determines that the father or paternal grandfather has withheld permission without just cause, his authority can be voided and the court can grant the girl permission to marry.

Article 645 of the Islamic Penal Code (1996) requires that any permanent marriage, divorce or rescindment must be registered. If a man enters into a permanent marriage, divorces, or rescinds without registering the act with a notary public, he is liable to discretionary imprisonment for a maximum of one year.

Article 6 of the Marriage Act (1922) requires that the man, before the signing of the marriage contract, must inform his future bride and a notary public of whether he has any other wives. If a man lies about having no other wives, he can be sentenced to between six months and two years in prison.

2.2.4.3 Divorce

Article 1133 of the Civil Code specifically grants the husband the right to divorce, on condition that he follows the proper legal procedures. All divorce petitions must be filed with the Family Court, which settles matters related to child custody, maintenance during 'eddeh (the legally prescribed waiting period before a woman can remarry), restitution of the wife's jahiziyyeh,\(^{102}\) and collection of the mahriyeh (bride price). The wife's financial and property rights must be secured before the divorce is finalised and registered at a notary public's office.

Article 1130 of the Civil Code grants the woman the right to file for divorce if she can prove in court that the marriage's continuation will cause her hardship ('usr-o haraj). (See Subsection 2.2.4.1, above.)

There are two kinds of divorce: rej'i (rescindable) and bà'en (non-rescindable). In a rescindable divorce, the husband has the right to revoke the divorce during the 'eddeh period – even over the wife's objections – and can legally require her to remain in his home until the completion thereof. The husband is required to pay for his wife's maintenance during this period, unless the court has previously adjudicated her delinquent of neglecting her marital duties.

\(^{101}\) Civil Code of Iran, Art. 1119 (1982).

\(^{102}\) A more extensive bridal trousseau, also including household goods and furniture.
Non-rescindable divorces are granted if the marriage was not consummated, if the wife has reached the menopause, or if she forgoes her mahriyeh and all other financial claims. In such divorces, the husband cannot re-establish the conjugal relationship during the waiting period and is not obligated to provide maintenance unless his wife is pregnant.

2.2.4.3.1 'Eddeh, or waiting period
After the termination of marriage, women must observe a waiting period, or 'eddeh, before they can remarry. In temporary marriage, the 'eddeh period is marked by the woman's completion of two menstrual cycles. 'Eddeh after divorce or rescindment of permanent marriage requires the completion of three menstrual cycles.

If the marriage was never consummated or the woman has reached menopause, no 'eddeh is required after divorce. However, widows are required to undergo a longer 'eddeh period, even if they have reached menopause. Article 1154 of the Civil Code states that 'eddeh after the death of the husband, in both permanent and temporary marriages, is four months and ten days. Widows have a right to maintenance payments (out of the husband's estate) during the 'eddeh period.

Temporary wives are not entitled to maintenance during or after marriage even though they, too, must observe the 'eddeh period.

2.2.4.3.2 Nafaqeh, or maintenance
In a permanent marriage, the husband is legally obligated to provide for his wife in exchange for her fulfilment of her marital duties. A temporary wife is not entitled to any maintenance, unless she inserts a stipulation to that effect in her marriage contract. According to Article 1107 of the Civil Code:

Nafaqeh includes housing, clothing, food, and household furniture and goods that is reasonably proportionate to the wife's status. A servant should be provided if the wife is accustomed to having one or if she is in need, due to illness or physical disability.\(^\text{103}\)

The husband bears the responsibility of paying for his wife's maintenance, but only on condition that she is compliant in performing her wifely duties, such as living in her husband's home and satisfying his sexual needs. A wife who is adjudicated delinquent of neglecting her marital duties can lose her maintenance entitlement. A wife is legally entitled to file for divorce if her husband refuses or is unable to pay for her maintenance.

If the marriage is terminated, the man is no longer legally obligated to provide for the woman, unless she is pregnant. In such a case, he must pay for her maintenance until the child is delivered.

Failure to pay maintenance is a criminal offence if the husband is financially capable, yet refuses to pay. According to Article 642 of the Islamic Penal Code, the husband can be fined or sentenced “to three months and one day to five months imprisonment.”\(^\text{104}\)

2.2.4.4 Inheritance
All Iranian inheritance laws are based on the principle that men are entitled to inherit twice as much as women are.

Heirs are divided and prioritised into three categories ('first-, second-, and third-degree heirs'):

1. Father and mother, children, grandchildren;
2. Grandparents, brothers and sisters (and their children);
3. Paternal and maternal uncles and aunts, and their children.

\(^\text{103}\) The types of nafaqeh mentioned in Art. 1107 are examples; the list is not exhaustive.

\(^\text{104}\) There have been few instances of women invoking this provision.
2.2.4.4.1 Inheritance from parent to child
According to the Civil Code, if the deceased leaves only one child and no surviving parents, his or her entire estate will be given to that child, regardless of its sex. If the deceased leaves several children of the same sex, the estate will be divided equally among them. If there are both male and female surviving children, the sons will inherit double the amount of the daughters (Article 907).

If there are no surviving children of the deceased, the grandchildren will inherit their parental share (Article 911). A grandchild related through his or her mother to the deceased will receive half as much of the inheritance as a grandchild who is paternally related.

Thus, the division of inheritance, which is based on males receiving twice as much as females, is not only applicable to first-degree heirs, but also to their children.

2.2.4.4.2 Inheritance from child to parent
The Civil Code provides for several possibilities:

1. According to Article 906, if the deceased has no surviving children or grandchildren and only one surviving parent, that parent will inherit the entire estate, regardless of sex.

2. According to Article 906, if the deceased has no surviving children or grandchildren and both parents are alive, one-third of the estate will be given to the mother and two-thirds to the father.

3. According to Article 892, if the deceased has no surviving children or grandchildren, but has several surviving siblings, the mother's inheritance share is reduced from one-third to one-sixth of the estate, provided that: (a) there are at least two brothers, or one brother and two sisters, or four sisters; (b) their father is alive; (c) the siblings are not prohibited from inheriting; and (d) the siblings are related by blood to, or have the same father as, the deceased. In such cases, the share subtracted from the mother's inheritance is transferred to the father, who will receive five-sixths.

4. According to Article 906, the only instance in which the mother and father inherit equal amounts is when the deceased has surviving children, grandchildren, or a more distant heir. In such cases, the deceased's parents will each inherit one-sixth of the estate.

2.2.4.4.3 Marriage parties' share of inheritance
Only in permanent marriages are wife and husband legally entitled to inherit from each other. However, the shares to which they are entitled are not equal.

According to Article 913 of the Civil Code, if the deceased wife leaves children or grandchildren (or other direct descendants), the husband is entitled to one-fourth of her estate, whether he is the father of the children or not. If the deceased wife has no surviving children, her husband is entitled to half her estate. If there are no heirs other than the husband, according to Article 949 of the Civil Code he acquires his late wife's entire estate.

According to Article 913 of the Civil Code, if the deceased husband leaves children or grandchildren (or other direct descendants), his wife is entitled to one-eighth of the estate, whether she is the mother of his children or not. If the husband has no other heirs besides his wife, she will inherit one-fourth of the estate, and according to Article 949 of the Civil Code the remainder of the husband's estate is legally declared heirless and will therefore go to the State. If the husband leaves multiple wives, the one-fourth or one-eighth share to which a sole wife is entitled shall be divided equally among them.

The husband is entitled to a share of his wife's entire estate, but the wife is excluded from inheriting any of his land. The wife may only inherit movable property and the monetary value of buildings and trees from her husband's estate. If the other heirs refuse to pay the wife the value of such building and trees, the court can order that she receive her allotted share of the actual property. This is stipulated by Articles 945 and 946 of the Civil Code.
2.2.4.4 Wills
Iranian law allows for and recognises wills. However, benefactors are only allowed to designate how one third of their estate is to be divided among the heirs. The remaining two thirds are divided among them according to the law. If the will is contested, it must first be legally recognised by the courts. If the will was notarised before the death, it is automatically legally binding.

2.2.5 Cultural factors
Many Iranian women do not view themselves as being independent of their family; indeed, they derive most of their identity, security, status and negotiating power from their family roles rather than from their legal position. Therefore, even if their inheritance rights are violated, most women will not risk being ostracised by the family as a result of legally claiming their rights in court. Almost all the women interviewed for the purpose of this publication were aware of their inheritance rights, yet many of them stated that they would rather waive them than see their family ties damaged or severed. Divorced, widowed and unmarried women are especially sensitive to the importance of family relationships, because they derive financial support and emotional sustenance from them.

2.2.6 Case studies
There is more to inheritance than the question of who receives a share. In the poorer neighbourhoods of Tehran such as Nasser Khosro, no one inherits. People are lucky if they have a proper roof over their heads to shelter them from the winter cold and the summer heat. Very often, the windows are broken and the walls dilapidated. It is common for families of seven to ten people to share one or two rooms. Often, there is no warm running water; in most houses, there is only a tap in the yard that is shared by all the inhabitants. In such situations, every single empty dwelling-space, whether it be a room, a basement or a cellar, is shared by several people. Adequate housing is more a dream than a reality.

In the more affluent parts of Tehran, however, the situation is very different. In most cases, families evade the Shari’a-derived inheritance rules and divide property and assets according to their own desires. Because the law allows only one third of a person’s estate to be willed, the most common method is to transfer the title of the property into the heir’s name while the benefactor is still alive. This method is especially common among married couples because, as explained in Subsection 2.2.4.4.3, above, the share to which the wife is legally entitled is the lesser. In case they die first, husbands tend to buy property in their wife’s name, or transfer the title into her name. Fathers often do the same for their children and other heirs. In this way, the benefactors, rather than the law, determine how their estate is divided. Obviously, if the deceased only leaves informal instructions on how the estate should be divided, the possibility for challenges and contestations between heirs is much greater. Thus, some family disputes end up in court. However, most of the people interviewed for the purpose of this publication said they had opted to avoid the legal system not only due to family loyalties, but also because they believed that a settlement reached by and within the family would better meet the long-term needs of its members.

The following are seven selected case studies to illustrate some of the issues discussed above:

1) **Farzaneh** — a 42-year-old single woman, the only daughter in a family of three sons. Farzaneh’s father, concerned about his daughter’s financial security as a single woman, had instructed his family to give her one of his apartments after his death. However, the title was not transferred into her name while he was alive. One son left home at a very early age and never claimed his share of the inheritance after their father’s death. The other two sons obeyed their father’s instructions and allowed Farzaneh to take ownership of one of the apartments. She later sold her apartment and, with the proceeds plus her mother’s inheritance share, purchased a larger and more expensive one, in which she now lives with her mother.
2) Soraya – a 55-year-old divorcee, with three sisters and two brothers. Their father had always told them that they were equal in his eyes, regardless of gender. After his death, most of the family respected the father’s wishes and decided to divide his property equally among his children. However, the eldest son objected and demanded that he receive his legal share — twice as much as his sisters. Soraya did not talk to him for twelve years because of this.

3) Ensie – a 64-year-old woman who has never married. She grew up in an affluent family with three brothers and one sister. The family owned a large area of agricultural land in the town of Saveh, several kilometres outside Tehran, as well as property in the older neighbourhoods of the capital. For years, everyone in the family lived well and their deceased father’s estate was left undivided. As Ensie grew older and stopped working, her need for a share of the estate increased. Her sister is married to a wealthy man. One brother remains in Saveh and works and lives off the best portion of the land their father left. The remainder of the estate – land in Saveh and property in Tehran – has yet to be divided. The remaining land in Saveh has not been cultivated and is therefore not worth very much. The urban property is in Tehran’s older, once affluent neighbourhoods, but with changes brought on by the revolution and the war, its value has greatly depreciated. As a result, there is less incentive for the other heirs to pursue division of the estate. Even though Ensie needs the inheritance, she says that it is not proper for her to pursue the matter alone, adding that it would be an absolute scandal for her to seek legal remedies.

4) Guiti – a Muslim woman who married Iman, a man from a Jewish family. In accordance with the Shari’a, Iman had to convert to Islam to be able to marry Guiti, which he did. Iman’s sister also converted to Islam when she married a Muslim man. The estate of Iman’s and his sister’s father, who had died many years previously, had been left undivided. After the sudden and unexpected death of Iman in 2001, his sister and mother decided it was time to divide the family property. According to Iranian law, which is based on the Shari’a, non-Muslim heirs are denied all inheritance rights if there is a Muslim heir in the family. Iman’s sister has taken his wife, Guiti, to court, claiming that Iman never converted to Islam, and in fact, remained Jewish until his death. As evidence, Iman’s sister and mother point to the fact that Iman was buried in a Jewish cemetery. Guiti claims that Iman’s mother asked that he be buried in a Jewish ceremony, and that she arranged this to respect his mother’s wishes. If the sister can prove that Iman never converted to Islam, she will have disinherited Iman and by extension, Guiti and their children, who are his heirs. As the only Muslim in the family, the sister will be entitled to inherit her father’s entire estate. After four years of court cases and appeals, the case has yet to be settled. This prolonged legal battle has put a great deal of emotional and financial strain on Guiti and her two adult children, who are still fighting for their inheritance.

5) Aalam – On his deathbed, Aalam’s husband asked that legal papers be brought so that he could transfer the title of their house into her name. Aalam, who was 25 years younger than her husband, cried and said that she did not want to think of such matters. Several years after her husband’s death, her eldest son sold the house. Although the property was not worth a lot, it was divided among Aalam and the children according to the law. By dividing the estate in accordance with each heir’s legal right, the eldest son absolved himself of any further responsibility toward his mother and siblings. He also deprived Aalam of the only home that she had, effectively making her homeless. For the rest of her life, she stayed for long periods in her other children’s homes, alternating between them and always remaining a guest. She dreamt of being able to have her own home.

6) Fereshteh – a married woman with three adult sons. Her husband is still alive and has already divided his property among Fereshteh and their three sons. Fereshteh has one apartment in her own name; the eldest brother received a very large and expensive apartment; the middle brother received a substantial amount of cash; the youngest and least-favoured son received a plot of land that is worth very little. Although all three children are males and are legally entitled to equal amounts, the father has divided his estate while still alive, according to his own preferences.
7) Lilly – a divorcee with three sisters and two brothers. Her father had instructed the family on how the majority of his property should be divided after his death: one apartment should be given to his wife, and each son should receive an apartment as well. However, he had not given explicit instructions on what to do with the fourth and last apartment. Lilly’s mother rents out the fourth apartment and keeps the rent money for herself. Lilly, who never had a good relationship with her mother, finds this unfair, especially because she herself is in need of money. Lilly announces her intention to take the dispute to court and legally claim her inheritance, but her sisters refuse to co-operate. After further considering the implications of legal action, Lilly realises that the court would divide the fourth apartment among all the heirs (that is, herself and her mother and five siblings), leaving her with little more than a much-maligned reputation in the family. So she decides against court action, but her overt consideration of it tarnishes her reputation anyway. Her sisters receive emotional and financial support from their older brother whenever they need it. Lilly, on the other hand, is seen as a bad sister and daughter by everyone in the family and is denied moral, financial and emotional support. Lilly says that she is being punished for breaking the unspoken code of family loyalty.

2.2.7 Political struggles for, and constraints to, women’s inheritance rights

Although women’s NGOs, activists and some women in the Government have been challenging women’s limited and unequal legal rights in general, inheritance rights, for the most part, have not been a subject of focus. When women’s activists and legal scholars challenge the legal system as it relates to women, women’s inheritance rights are included in a long list of rights in terms of which women are accorded lesser status. Women legal scholars and attorneys such as Shirin Ebadi and Mehrangiz Kar have challenged the law’s gender-based inequalities, arguing that they run counter to women’s human rights and are based on a limited, restricted and specific interpretation of Islam. These advocates have been careful to contest the law and specific interpretations of Islam, rather than Islam itself. Accordingly, their positions have received the support of high-ranking clerics, including Ayatollah Mousavi Bojnourdi, who have offered alternative interpretations of Islam that favour improving women’s rights. For example, the following statement by Ayatollah Bojnourdi challenges the current law that forbids wives from inheriting their husband’s land:

I believe that inheritance law must be reconsidered. The law is based on only one Islamic jurisprudential opinion while other jurists such as the esteemed Sayyed Morteza state that a woman can inherit from all holdings and property, except for the land that her husband died on, meaning his personal home. In that case, she should inherit the value of that home, not the actual home …. The reason that the wife is not allowed to inherit her husband’s home is that she may remarry and bring her new husband into that home, which may upset her husband’s family.

But what if the wife does not remarry or if she marries her deceased husband’s brother and his family is not upset? … The Koran places no difference between men and women. In the same way that the Koran states that the husband inherits from the wife, it states that the wife inherits from the husband. In this matter, the Koran does not raise any conditions or stipulations.105

Such statements from religious authorities certainly bolster the position of women’s rights advocates within an Islamic framework, yet they have no real legislative power. That lies with the conservative-dominated Guardian Council, which, as stated in the Constitution, is empowered to ensure that all laws of the land are in agreement with Islam. After the reformists were overwhelmingly elected into Parliament in 2000, a significant number of bills were passed that increased women’s legal rights. However, because the Guardian Council rejected many of those bills, most of them never became law. One of the last bills passed by the reformist Parliament that sought to improve women’s rights concerned women’s inheritance rights.

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105 Ayatollah Bojnourdi (Head of the Dept. of Islamic Jurisprudence and Law at the Research Institute of Imam Khomeini and Islamic Revolution, and Head of the Dept. of Law and Political Science at the Teacher Training University), quoted in Mehrangiz Kar, Raf'e Tab'iz az Zanan (The Elimination of Discrimination against Women) (Tehran, 1999), in the chapter ‘Equal Rights in Marriage’, at pp. 337-338. In this chapter, Kar refers in particular to CEDAW Art. 16 on marriage and family relations. Ayatollah Bojnourdi’s quote, included in a section on women’s inheritance rights, is offered as a possible Islamic jurisprudential solution to the inheritance rights issue. He proposes an interpretation of Islamic jurisprudence that is more egalitarian than usual, allowing for women’s equal inheritance rights.
The bill included land as part of the wife's inheritance share and allowed her to inherit her husband's entire estate in the absence of other heirs. However, the Guardian Council rejected the bill and sent it back to Parliament. By the time the Council had reviewed and returned the bill, conservatives had taken over Parliament in new elections. The conservative-dominated Parliament refused to reconsider the bill, making it effectively 'dead on arrival'. Given the political status quo, there is little hope for legislation that would expand women's rights in general — and women's inheritance rights in particular.

2.2.8 Recommendations

2.2.8.1 To the Government of the Islamic Republic of Iran

The laws governing inheritance rights should be amended so that men and women can inherit equal shares of the deceased estate. Furthermore, wives should be entitled to inherit all types of property, including their husband's land. Because labour costs are low in Iran, the value of most immovable property is embedded in the land on which it sits, and not in the built structure that wives are currently entitled to inherit.

Among less affluent women, inheritance is less significant than job opportunities, which would allow for their economic independence. For women, the Government should design and implement employment opportunities that are labour-intensive, as opposed to capital-intensive. In light of the growing number of female-headed households, the need for women's economic independence is becoming ever more important. Small loans with little or no interest should be available for women who head households, thus providing them with the opportunity to start and own small businesses.

Adequate social security payments should also be made available to women, based on the number of children they have and the years of household work and child-rearing they have invested in family and society.

2.2.8.2 To non-governmental organisations

NGOs that advocate women's human rights should expand their focus to include economic, as well as civil, rights. Increasing women's financial independence and security could also strengthen their efforts towards obtaining greater civil rights. Such a shift would require that NGOs and other advocates actively recognise that some civil rights cannot be fully optimised without securing economic rights, including housing rights.

Furthermore, campaigns to end violence against women and enhance their self-reliance should be coupled with development programmes that promote the economic empowerment of women and their access to secure housing.

2.2.8.3 To local communities

A cultural and social paradigm shift is required with regard to women's status and relationships within family and society. In many communities, women's unequal inheritance rights have become culturally accepted among both women and men. Many women do not question inheritance laws that grant them only half the entitlement of men.

Local communities must work toward a culture of equality and justice that includes women. Women should be regarded not as dependants, but as fully autonomous and independent human beings whose rights and dignity are to be respected. Furthermore, in those cases where women demand their full rights, the community should not resist and condemn such actions, but support them.

Women must increase their demands within their communities to be valued as a whole person, not one worth half as much as a man. Moreover, their well-being and dignity should not be sacrificed to the benefit of family and community.
2.3 JORDAN

2.3.1 Introduction

The Hashemite Kingdom of Jordan, a constitutional monarchy that became independent in 1946, is bordered by Iraq to the east, Saudi Arabia to the south, Israel to the west and Syria to the north. It is located at the centre of a region that – politically, socially and economically – is complex and dynamic. Indeed, this strategic location has been a key determinant of Jordan’s development processes. The current population of around 5.6 million is almost entirely Arab, with small minority communities – Circassians, Armenians and Kurds. Approximately 95 percent of Jordanians are Sunni Muslims; the remainder are mainly Christians, Druze, Shi’a Muslims and adherents of the Baha’i faith.

In Jordan, the issue of women’s rights came to the fore after the Beijing Conference attended by a top-level delegation from the Kingdom. The demand for gender equality and equity is now firmly on the agenda. The combined efforts of women’s advocacy groups, as well as Government investment in social policies, have created a relatively conducive environment for women’s social empowerment. As a result, women have made considerable gains in some areas – for example, in terms of access to health and education systems – though these have yet to translate into economic and political empowerment.

It is only more recently, however, that the issue of women’s property and inheritance rights has been raised, albeit tentatively, at grassroots level — especially among poor and marginalised groups of women. The issue is complex: customary, religious and legal rules intertwine with social and cultural practices. Current regional literature tends to focus on religious and legal aspects of inheritance, though in reality much of the tension and many of the contradictions related to women’s inheritance have their roots in the socio-cultural realm.

2.3.2 Women and early social systems

2.3.2.1 Influence of various cultures

Jordan lies on the traditional pilgrimage route to Mecca for Muslims from Syria, Lebanon and Southern Russia. As a result, it has long benefited from the interchange of peoples, knowledge and cultures. Jordan is also at the hub of a major network of trade routes; for example, those established by the Nabateans, who built their capital at Petra, and those later used for trading with the Holy Land. Perhaps as a result of this traffic and meeting of peoples, ideas and social systems within the Arab region, Jordan is recognised for its tolerance of different religions and ethnic groups. To a large extent, Jordan has adapted to the changing reality by celebrating its diversity of cultures and managing to respect the various social and religious sub-systems within the State. This necessarily affects the way in which the process of promoting women’s inheritance rights in Jordan can be understood: generally, harmony is maintained through compromise, and conflict is avoided.
2.3.2.2 Jordan’s early history: the Bedu
For thousands of years, the people referred to as the Bedu\textsuperscript{113} have inhabited the region now known as the Hashemite Kingdom of Jordan. Across the desert and semi-arid region (and beyond the borders of Jordan), the Bedu can be seen as a distinct social group united by common ancestry and shared kinship, with communal territorial allegiance. The economic, cultural and social systems of the Bedu evolved in response to their natural environment: harsh climate, with extensive drought and therefore limited grazing land. These values for survival still underpin many of the formal and informal practices that now affect women’s rights, especially in respect of property and inheritance.

2.3.2.2.1 Division of labour and gender-based roles
The economy of the Bedu was, and continues to be, one of near self-sufficiency, with livestock providing most of life’s basic necessities. Historically, the division of labour between men and women tended to be relatively equal; all were subject to the same harsh conditions.\textsuperscript{114} Bedu women had a high degree of independence, enjoying greater equality with men than their counterparts in settled communities.

The nomadic Bedu have developed a pattern of ownership that is collective, believing that individuals cannot exclusively own land, water, etc.; rather that they should improve it through communal labour — by cultivating it, building water-collection and irrigation systems, etc.\textsuperscript{115} This requires mutual exchange and shared access; not just within the same tribe, but also between and among neighbouring tribes. Territorial organisation is considered flexible, and borders between tribes are ever-changing. This approach to property still influences the ability of women to own, accumulate, and manage their own property — with concomitant implications for attitudes towards women’s inheritance rights.

The concept of tribe and the importance of loyalty to, and pride in, the family name have long been central to the identity of Bedu communities. Many of the informal practices of inheritance today, whereby women forego their rights in favour of male members of their tribe, have their origins in such tribal loyalty and shared livelihood strategies. Hardly surprisingly, the traditional practice of marrying within the tribe is closely intertwined with Bedu identity. Women who try to break away from this practice risk incurring the disapproval of their peers and may well face problems in securing their inheritance rights.

To this day, the Bedu outlook on life is determined by the sense of belonging to an extended family, clan and tribe, all of whom are integral to a familiar and revered ancestral lineage. This has serious implications for women, as the honour of the tribe is seen to be embodied in the virtue of its women. As women have the ability and responsibility to continue the ancestral lineage, any ‘transgression’ by them — in particular, bearing a child out of wedlock — is seen as being disruptive to the purity of the line and thus to the inheritance of the lineage. It is therefore regarded with the utmost contempt.

2.3.2.3 Hierarchy and gender equality
Bedu society is renowned for its semi-egalitarian ideology, which is manifest in the transparent and accessible leadership structures and systems of justice.\textsuperscript{116} Generally, there is greater equality between men and women among traditional Bedu than among the more settled, urbanised sectors of Jordanian society. Even so, the Bedu accord respect primarily to the sheikh or male elders.

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\textsuperscript{113} Bedu is Arabic for Bedouin, a generic term signifying ‘desert-dwellers’ or ‘the unsettled’ that has come to be applied generally to Arab nomadic groups. The Bedouin are often stereotyped or romanticised as endlessly wandering the desert in search of water and food for their flocks. In reality, only a small portion of Bedouin can still be regarded as true nomads; many have settled in order to cultivate crops rather than drive their animals across the desert.


2.3.2.3.1 Bedu legal systems
The Bedu tribes are predominantly Sunni Muslim. Social control and equilibrium among the Bedu are not maintained via formal social mechanisms and institutions. Since Bedu culture used to be a pre-literate form of socio-economic organisation, its customary law and judicial system was produced and reproduced orally. As such, the customary law tended to be defined and interpreted locally. This inevitably led to conflict (or at least discord) when formal, written, case-based law was introduced. Given the patriarchal nature of Bedu society that still prevails today against this background of customary tradition, women's autonomous interests are not perceived as paramount.\textsuperscript{117}

2.3.3 Modern social changes and structures
The modern era of Jordan's history dawned in 1921 when Emir Abdullah established the Emirate of Trans-Jordan as a self-governing territory under British mandate.\textsuperscript{119} At that time, the way of life was still largely nomadic. Not until the Hashemite Kingdom of Jordan gained its independence in 1946 did the most significant social, political and economic changes begin to occur.

2.3.3.1 Settlement of the Bedu
The first and foremost of those changes was the settlement of the nomadic Bedu, which was stimulated through State support of social infrastructure and the provision of State employment for rural Bedu males. This process was accompanied by the formalisation of traditional land rights and the allocation of certain areas of land to tribes, clans and individuals. For Bedu, land is fundamental to identity and seen as a part of their honour.

The process of settlement inevitably led to the accumulation of property, including land and housing. The key element was a permanent house, typically built on land that had been formally allocated to an extended family in the name of its male head. This property would then be expanded as the family accumulated money, and to meet the needs of the growing extended family. All this has important implications for issues of property and inheritance rights of female family-members. Nevertheless, it is still true that the Bedu approaches and attitudes to women’s property and inheritance rights are largely the product of their cultural heritage as nomads.

Although there are very few truly nomadic Bedu left in Jordan (recent census data suggest some 10 000), it is widely recognised that the traditional values and social systems of the nomadic Bedu are still part of the psyche of the settled Bedu community, and have influenced Jordanian culture.

2.3.3.1.1 Effects of settlement on inheritance
The Jordanian laws of inheritance are based on the Shari’a, which prescribes how property is to be distribution to heirs.\textsuperscript{120} Under the traditional Bedu tribal system, inheritance caused few problems, but settlement and the accumulation of property led to new issues. The predetermined rules for distribution of the deceased estate, if strictly adhered to, require that land, for example, be divided into parcels and allocated to family members. There is tremendous pressure on female family members to forego their inheritance rights in order to maintain the family’s ability to produce enough food to support them and their children. Indeed, from this perspective, it would seem to be counter-productive for women to refuse to forego their rights. For rural communities especially, the result of this inter-generational subdivision of land is that individual parcels of land become so small that they are no longer viable, which often leads to the exodus of young people from smaller communities.\textsuperscript{121}

\textsuperscript{117} A. Al-Abadi, Justice Within the Bedu Judicial System (Amman: Dar Majdalawi, 1983) (in Arabic).
\textsuperscript{118} The term ‘modern’ is used here neutrally to denote recent time (as opposed to historical time), rather than a value system (modern as opposed to traditional).
\textsuperscript{120} See Subsection 1.3.1.1, above.
\textsuperscript{121} An example is Dana in Tafileh Governorate; ZENID report, Sustainable Livelihood Assessment of Dana in Tafileh (ZENID, 2002).
Another issue is that those wishing to sell land report difficulties in obtaining the necessary signatures from all co-owners. In the context of inheritance, this significantly reduces opportunities to release funds for distribution to women family members who have ‘left the clan’.

2.3.3.2 Impact of refugee influx
The second major social change in modern Jordan was the arrival and settlement of waves of Palestinian refugees following the creation of the State of Israel in 1948 and the Arab-Israeli wars of 1948-1949, 1967 and 1973. This influx, coupled with prevailing high fertility rates, has led to a massive population increase: from 586,000 in 1952 to 5.3 million in 2002.

2.3.3.2.1 Accumulation of property by a new class of traders and manufacturers
Being war refugees, the Palestinian newcomers had very little in the way of property and disposable assets, and were by definition landless. Initially, therefore, issues of inheritance were not a major consideration for them. Those Palestinians that were granted Jordanian citizenship integrated relatively quickly, mostly settling in the urban areas of the Kingdom, and over time became successful in developing trade and production. Indeed, it is this social group that has been most active in accumulating capital, property and, to a lesser extent, land. This has had major implications for issues of inheritance; in particular, those related to women’s inheritance.

2.3.3.3 Urbanisation and rising land values
The combined processes of Bedu settlement and refugee integration stimulated a trend away from a rural towards an urban-based society. By 2002, only 22 percent of the population of Jordan were classified as ‘rural’, compared to 60 percent in 1952. This, in turn, led to significant changes in the importance of property, especially land and housing. Until the 1980s, land was of little monetary value. However, with the rapid population growth in urban centres including the capital, Amman, the price of land rose as refugees attempted to create personal stability by building houses and settlements. The process of urban sprawl meant that those already owning land on the urban outskirts benefited from the rise in real estate prices. As prices rose, many urban dwellers could no longer afford to buy their own property, which meant that the number of people living as tenants in rented property grew considerably.

2.3.3.3.1 Demand for property outstrips supply
In recent years, this trend has led to a distorted housing market for the poor. Many of those with tenancy agreements at low rents suffer appalling housing and living conditions. Landlords have become reluctant to take in new tenants, fearing that their rental property will not be recoverable. As a result, large sections of property in Amman are left empty and deteriorating, and of little value for inheritance claims. This, in turn, has caused a serious shortage of housing for the poor.

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122 This process was facilitated by the strict zoning laws that prevented the construction of ‘high-rise’ buildings in the city. For an interesting analyses of this issue and how it benefited the land-owning class as opposed to the merchant class, see Y. Mansour, Policies, Institutions and Processes Affecting Socio-economic Development and Poverty Alleviation, briefing paper for the National Human Development Report (NHDR) 2004 (2001), and K. Carroll, Business as Usual? Economic Reform in Jordan (2003).

123 As confirmed by COHRE fact-finding mission to Jordan, Sept. 2004.
**Housing Conditions for the Urban Poor**

Recent research\(^{124}\) reveals that overcrowding is also a serious problem among poor urban households. One woman noted:

“Twenty people live in this house. I share a room with my ten children. My husband’s second wife has one room with her children. Each of her married sons has one room for his family (one son has one child, while the other has three).”

Overcrowding is sometimes accompanied by high rents. Often, rents exceed the income of the household. On respondent noted:

“We are nine people sharing two rooms for JD 70 [70 Jordanian dinars, about US$ 99] a month. We would not all live together, but we have to pool our money to be able to afford even these miserable living conditions.”

Other tenants reported feelings of insecurity and vulnerability:

“The landlord attempted to throw us out of the house to seek a higher rent. He cut off the electricity and demanded that we leave. My husband threatened to complain to the Governor, so he stopped bothering us. But he is still determined to make us pay a higher rent.”

The quality of housing is also critical for the inhabitants’ health and overall well-being.\(^{125}\) Poor households complain about inadequate, badly-constructed housing in poor repair, often damp and with inadequate ventilation. They also complain of over-density: “endless matchboxes”, which are characterised by unhygienic conditions and contribute to ill-health. The demands and expectations of these respondents were modest: “a window” or “fresh air” were the main needs expressed.

It is striking that most of the respondents were women: with the primary responsibility for the home, women bear the brunt of inadequate housing.


THE ‘POOREST OF THE POOR’ CANNOT AFFORD BASIC UTILITIES

“We face serious problems during the summer because of the shortage of water. We have to buy tank water for domestic use, which adds to expenses which we already cannot cover.”

“We have been living in this house for 20 years. We pay JD 60 [US$ 85] a month in rent. However, as our financial situation has deteriorated we are unable to pay our bills. So we have started collecting water in containers. As for the electricity, we pay it irregularly depending on our financial situation. We risk spending some months in complete darkness.”

“Our rent for one room is JD 35 [US$ 50] a month, our electricity, JD 10 [US$ 14] a month, water JD 12 [US$ 17] every three months. However, this is too high. We cannot afford to pay and we are being threatened with eviction for non-payment.”

“A single mother, I live in one room with my two small grandchildren, my daughter and her husband. I have two other children who stay with me sometimes. My ‘kitchen’ is outside, I cannot afford to have a house with a kitchen. I pay JD 40 [US$ 57] a month in rent, and sometimes I cannot pay. My landlord is kind and lets me stay, but I am not sure how long his kindness will last.”

LIFE IN THE REFUGEE CAMPS: ZARQA, AMMAN, JORDAN

As stated in the introductory paragraph to Subsection 2.3.3.2, above, the Arab-Israeli wars of 1948-1949, 1967 and 1973 forced waves of Palestinian refugees into Jordan. The United Nations set up several refugee camps to meet their primary needs, including one of the largest, in Zarqa, a governorate of Amman. It now houses over 16 000 people, including some of the poorest residents of the Jordanian capital.

Housing in the camp today is old and decrepit. COHRE met with several women who showed us crumbling walls, broken pipes, and electrical equipment and wiring in dangerous states of disrepair. They cannot afford to fix these problems, and so they wait for the UN, for the Jordanian authorities, for anyone to help them.

One woman explained that she personally paid JD 500 [over US$ 700] to have her roof fixed after it collapsed. As her husband is unemployed, they now have no money left, and her 13-year-old daughter and 12-year-old son must go into central Amman every day to sell food on the streets.

Households that are headed by single women are often in dire straits. One woman spoke of having great difficulty finding enough food for her children. It is through the “kindness of neighbours and the Grace of God” that she is able to sustain her household — her in-laws have come by several times wanting to get her out. She does not know who to turn to for help, except for a local women’s community centre that is assisting her.

126 Testimony of woman from South Shooneh, ZENID, 2005.
127 Testimony of Um Maged, at Al-Natheef, in ZENID report (n. 124 above).
2.3.4 Women and Jordanian law

2.3.4.1 The legal context: patriarchy

In Jordan, women have to deal with a fundamentally patriarchal system. The monarchy, as defined by the Constitution, is patriarchal: in the Hashemite dynasty, the throne passes in a direct blood line through male heirs.\footnote{Constitution of the Hashemite Kingdom of Jordan, http://www.kinghussein.gov.jo/constitution_jo.html} In Bedu society, clan leaders and household heads are always men. To men and women, Islam assigns clearly defined and different roles and responsibilities that are deemed to be ‘complementary’. This helps to create an environment in which women's rights are not perceived as important.

The Jordanian Constitution does not expressly prohibit gender-based discrimination. The only provision that approximates to a general principle of non-discrimination is Article 1.6, which states:

> All Jordanians are equal before the law in rights and obligations, without distinction as to race, language or religion.\footnote{Ibid.}

Note that there is no mention of gender or sex here. In national laws governing various aspects of social and familial life, there are clearly discriminatory provisions.

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**WOMEN’S PERCEPTIONS OF RIGHTS — THEIR ORIGIN AND HOW TO CLAIM THEM\footnote{Based on JHDR 2004 (n. 125 above).}**

In Jordan, poor and marginalised women expressed a broad understanding of their rights. Some related rights to religion: “The thing that God gives me” or “One of Allah’s names”; the “Truth, or Al-Hakk”. They identified rights that are accorded under Islam and the Shari'a, mentioning social rights (to education, health and a clean environment), economic rights (to employment and to spend one’s money as one wishes), legal rights (to a name, legal capacity, nationality, inheritance and legal recourse) and political rights (to freedom of expression, security and political participation).

Some Jordanian women saw rights as central to their existence: “Part of humanity that humans cannot live without”. Others linked rights to the law and noted that they have to be actively claimed: “Something I fight to have through the law”; that they necessitate an enabling environment: “The Government should help me access my rights”. In noting a broad range of social, economic and political rights, they referred to many ‘family’ rights: to be able to choose whom to marry, to build a family, to have a stable life and to maintain kinship relations. They were unclear as to whether these rights are gender-specific.

For most women, their understanding of rights begins at home, in a patriarchal environment. Most women stated that the father is the primary decision-maker, though in some cases the whole family participates. They pointed out that decision-makers would sometimes influence others by use of force or pressure — by physical violence or through humiliation and trickery. The women stated that, in such situations, they felt that they had been abused. Some would keep silent and seek help from God, others would approach relatives. Some stated that they had sought legal help.

Women recognised the legal right to inherit property after the death of a family member. Some partly understood the procedures to claim their inheritance, the necessary documents and the institutions to approach, but few understood the complete process.

2.3.4.2 Personal status laws\footnote{This subsection is based on Jordanian Personal Status Law No. 61 (1976) and Provisional Jordanian Personal Status Law No. 82 (2001).}

It is primarily in respect of personal status that Jordanian women are denied their internationally guaranteed equal rights with men. As in most Arab countries, the central concept governing the life of females is that of ‘guardianship’: women and girls live under the legal guardianship of their husband, father or some other male member of their family or tribe. In effect, their ‘civil rights’ are placed under
the control of these guardians. Women, therefore, are not legally entitled to make basic decisions for themselves — those that relate, for example, to the right to choose whom to marry, the right to divorce, the right to take up employment and the right to leave the country. Although the Personal Status Code (PSC) incorporates ‘only’ family laws, these form the basis for discrimination against women in all aspects of their lives, and in both the public and private spheres.\textsuperscript{136}

**THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW) SPEAKS OUT**\textsuperscript{137}

“174. The Committee notes that a woman’s right to choose a family name, a profession or occupation, rights upon divorce and rights and responsibilities as a parent are not recognized in the Personal Status Code. It also notes with concern that Jordanian law recognized the practice of polygamy.

“175. The Committee calls upon the Government to amend the Personal Status Code to recognize women’s rights to choice of family name, occupation, as well as their rights upon divorce and with regard to their responsibilities as parents. The Committee calls upon the Government to reconsider the law and policy on polygamy with a view to eliminating this practice in line with the Convention [CEDAW], the Constitution and evolving social relations in the country. It also recommends that the Government review its reservations to article 16 (c), (d) and (g) with a view to their withdrawal.”

**2.3.4.2.1 The ‘Family Book’**

According to Jordan’s Civil Status Law\textsuperscript{138} women’s guardianship is recorded in the ‘Family Book’ (\textit{daftar al-a’ilah}). This document is required to make nearly all official arrangements and transactions, including voting for, or running as, a candidate for elected office, registering children for school or university, obtaining civil service jobs, or gaining access to social services such as food assistance. Upon marriage, a woman is transferred from her father’s \textit{daftar} to that of her husband. If a woman is ‘separated’ from a \textit{daftar} due to divorce or death, the only solution is to re-register in the \textit{daftar} of a male family member. This becomes a major problem if the only male family member is working abroad or is deceased.\textsuperscript{139} Cases have been reported of women being denied access to the Family Book after divorcing their husband or becoming a widow.

**WIDOW DENIED ACCESS TO THE INDISPENSABLE ‘FAMILY BOOK’\textsuperscript{140}**

Commenting on the problems of widowhood, Umm Mohammed said:

“My husband was 30 years older than me. After he died, my in-laws refused to give me the Family Book because they did not want me to claim my inheritance.”

Without the Family Book, she lost access to cash assistance from her husband’s pension. Now she is reduced to surviving on loans and handouts.

**2.3.4.2.2 Changes to personal status laws**

In Jordan (as in most of the Arab region), such laws have been the subject of considerable activism by human rights organisations. In response to such pressures, between 2001 and 2003 the Government passed several temporary laws related to personal status. These enabled women to apply for passports without spousal or custodial consent, to initiate divorce and, upon death, to pass their retirement benefits on to their husband and children. A further temporary law amended Article 340 of the Penal


\textsuperscript{138} Jordanian Civil Status Law No. 9 (2001).

\textsuperscript{139} http://iwraw.igc.org/publications/countries/jordan.htm

\textsuperscript{140} JHDR 2004 (n. 125 above), p. 118.
that exonerated men for 'honour killings' (see Subsection 2.3.6.3 below). Unfortunately, when the House of Representatives came back into session in 2003, it rejected many of these provisional laws.\textsuperscript{162}

\subsection*{2.3.4.3 Women and nationality laws\textsuperscript{143}}

Jordanian women do not enjoy equal rights with men in respect of the nationality of their children: any child whose mother is Jordanian and whose father is not Jordanian has no right to Jordanian nationality. Conversely, however, children of Jordanian men who marry non-Jordanian women are entitled to Jordanian nationality. The law is thus fundamentally discriminatory against women. Recent research indicates that many women perceive this as an injustice and abuse of their rights. Regarding its obligations under the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), Jordan has expressed a reservation to Article 9(2), which provides for women's equal rights with men in terms of their children's nationality.

\subsubsection*{2.3.4.3.1 Implications for property inheritance}

As a result of the combination of tribal traditions with the modern legal concept of nationality, Jordanian women married to foreigners are relegated to a very unfavourable position. Their being married to a 'stranger' means that their children will be 'strangers,' or foreigners, too. Consequently, if a woman in this position claims her share of her natal family's assets, her claim is perceived to be illegitimate — an attempt to 'estrange' part of the family property. This is especially true for land: the general perception is that you cannot give land to a foreigner. Even if a woman who is married to a foreigner has land of her own, she cannot pass it on to her children.

This is clearly a significant issue: in the five-year period from 1996 to 2001, of the 10,798 Jordanian marriages registered with Khad al-Qudar (the religious registry of marriages), 450 (4.2 percent) involved Jordanian women marrying non-Jordanians.\textsuperscript{144}

There are many other countries in which women married to foreigners are prevented from inheriting, but in Jordan the situation is exacerbated by the fact that so many Jordanians are refugees. Many women with Jordanian nationality still prefer to marry within their extended family, even if the husband does not have Jordanian nationality. Thus, the issue of gender nationality rights intersects with refugee rights.

\subsection*{2.3.5 Women and economic empowerment rights}

\subsubsection*{2.3.5.1 Women's employment rights}

In 2002, women's contribution to the Jordanian adult labour force (age 15 and above) amounted to no more than 7.7 percent,\textsuperscript{145} largely due to social restrictions and, to a lesser extent, legal constraints.

The Constitution provides for the right of every citizen to work (Art. 23.1), but in reality many factors limit women's opportunities to work. The Labour Act prohibits women from working at night or in jobs that are regarded as dangerous (Sections 46-7). According to the Personal Status Code (Section 68), a married woman who works outside the home without her husband's consent is not entitled to the latter's support, unless a clause to the contrary effect is included in their marriage contract. Note that, according to Jordan's initial report to the UN Committee on the Elimination of Discrimination against Women (CEDAW):

Islam permits women to pursue any respectable profession, provided her husband agrees and that it does not interfere with the performance of her duties as a mother and mistress of the home.\textsuperscript{146}

\textsuperscript{141} Provisional Penal Law No. 86 (2001), amending Jordanian Penal Code No. 16 (1960).


\textsuperscript{143} ZENID report, Nationality: Jordan Case Study (2003).

\textsuperscript{144} Data was not collected before 1996, so the total number of such marriages is not known.

\textsuperscript{145} JHDR 2004 (n. 125 above), Table No. 7, p. 150.

\textsuperscript{146} CEDAW/C/JOR/1, on Art. 16 of the Convention on the Elimination of All Forms of Discrimination against Women.
The same minimum wage applies to men and women. Jordan is a party to ILO Convention No. 100 on equality of remuneration, though no domestic law embodies this principle and, in practice, a wage gap exists to women's disadvantage. In the public sector, family allowances are paid to women employees only if their spouse is retired or deceased, whereas such allowances are automatically paid to male employees. Moreover, whatever employment rights exist for women are not applicable in the agricultural and informal sectors, where the majority of working women, especially the poor and marginalised, find employment.

Women are increasingly being targeted as potential micro-entrepreneurs, who will generate income and even employment for Jordan's socio-economic transformation. They are provided with access to micro-credit to establish and expand small enterprises. A major obstacle to women's access to more substantial forms of finance lies in their lack of economic and financial independence, as reflected in the fact that they generally do not own real estate and, without this form of collateral, have no access to bank loans. There is considerable pressure from both family and community to register all assets in the name of the husband or father. As a result, many women who establish successful businesses do so in the name of a male member of the household and, under the existing inheritance laws, see the fruits of their labour expropriated in the event of his death.\textsuperscript{147}

2.3.6 Discrimination in practice

2.3.6.1 The discrepancy between law and policy, and practice

Even where established laws and regulations and officially stated policies appear to support women, a discrepancy exists between them and the daily reality experienced by women, especially the poor. Women throughout Jordan report that – at all stages of their lives – gender discrimination is a significant factor that constrains their ability to claim their rights. Given that women are primarily responsible for the well-being of their children, the elderly and the sick, an inability to exercise their rights damages the livelihood and welfare of the whole family.

\textbf{GENDER DISCRIMINATION, FROM CRADLE TO GRAVE, LIMITING ACCESS TO RIGHTS}\textsuperscript{148}

From the outset, girls are disadvantaged by the norm that a higher value is placed on boys within the family. From an early age, girls are socialised into defined and restricted gender roles. Within the household, their access to resources tends to be controlled by male family members. As one father noted:

“The girl is the weak part. We do not neglect her. The girl’s right is the responsibility of her family. Anything she needs, she gets from her family.”

In such contexts, although girls may be protected, they have limited ability to claim their entitlements. Fawzieh, a 22-year-old women from South Shooneh, put it this way:

“Rights are absent. I didn’t get my right to education, food or clothes and I can’t voice my opinion as other girls can.”

Although the personal status laws forbid marriage under the age of 18, some communities have reported that girls as young as 14 and 15 are withdrawn from school by their parents in order to get married.\textsuperscript{149} Some girls accept this situation, even if it interferes with their right to education. Houda, a hard-working 12-year-old student in Madaba who is among the top three of her class, recounted

\textsuperscript{147} A. Sonbol, Women of the Jordan: Life, Labour and Law (Syracuse University Press, 2003).
\textsuperscript{148} Based on JHDR 2004 (n. 125 above), pp. 111-117.
\textsuperscript{149} Data from the Department of Statistics reveals that, in 2002, there were 13 143 married women between the ages of 15 and 19.
that her parents had arranged for her to marry her cousin and for her to leave school that year. She noted:

“For me, education is everything ... but my parents are doing what is best for me.”

Other young girls spoke out more critically about these issues:

“Girls are always treated with injustice. They have marriage imposed on them by the age of 16. But men are allowed to get their education and can work any place they want. There are families here who will not even allow their daughters to go to the community centre.”

Within marriage, strictly defined gender roles are still common and open debate about these roles is constrained by peer pressure, which is often exerted by other women, as well as the broader community. Women are perceived to be the primary source of affection and care for children, and are responsible for domestic duties. Working women report that they are expected to carry out all these domestic tasks, even when their husband is unemployed.

Women’s involvement in household decision-making is limited to a narrow range of family decisions concerning daily meals, health decisions and the performance of social duties. Men tend to make the more important and strategic livelihood-related decisions concerning, for example, the number of children and their marriages, choices of employment, involvement in local activities and voting for political candidates. Some women argued that this division in decision-making can contribute to the family’s poverty. A young woman from Dayr al-Khaf said:

“Men take the decisions that are related to income and spending on their own and usually they are not the right ones.”

In other studies, women cited men’s “disorganised way of spending money and wasting family resources” as a major cause of poverty.

Women in one community listed the most commonly-occurring problems that they felt would undermine their family’s well-being:

- Power exerted over a wife by her in-laws;
- A husband hitting his wife and children;
- The restriction of a wife’s mobility;
- Restricting the right of girls to receive education.

Divorced, separated and widowed women who had lost the protection of males within the family reported great difficulties in claiming their rights. Divorced women, in particular, complained that their legal right to alimony was not always respected by their ex-husbands, and said that it was not customary to enforce this right. In general, both divorced women and widows felt that in-laws were not supportive of their rights.

2.3.6.2 Women and domestic violence
As everywhere elsewhere in the world, many women in Jordan are subjected to violence and abuse by men. The majority of adult Jordanian women live either with their husband’s or with their own parental family. Gender roles restrict women’s social and physical mobility, and the vast majority are economically dependent on male family members. This makes them more susceptible to domestic violence. Violence is legally and institutionally sanctioned within marital and familial relations. Legally, a man can never be accused of raping his wife because he has legal rights over her body. He also has the right to beat her — albeit ‘only lightly’ — if she disobeys him. Recent research indicates that the vast majority of women believe that it is acceptable for a husband to beat his wife under certain circumstances.
2.3.6.2.1 Women's attitudes to domestic violence
In the recent national Demographic and Health Survey (2002), 59.5 percent of all women respondents who had ever married agreed that a husband is justified in hitting or beating his wife for burning the food. In light of this, the struggle to end gender-based violence is likely to be long and challenging.

Women's attitudes towards domestic violence are ambiguous and often contradictory. The Jordan Human Development Report (JHDR) 2004 illustrates the mixed views on this controversial issue. One woman called Umm 'Ali remarked: “I’m only married on paper. My husband is there to sit and do nothing. He hits me and the children, then asks for money at the end of the day.” Others appeared to be more accepting, stating that: “It is the right of the husband to hit his wife if she does not behave appropriately.” Some women noted that men's violence towards women is connected to their loss of status in a changed world.

The issue of domestic violence has been explicitly on Jordan’s development agenda since the mid-1990s and has received considerable attention since the launch of the Family Protection Project in 2000. In September 2002, the Government announced its plan to open Jordan’s first national shelter for victims of domestic violence.

2.3.6.2.2 The scale of the problem
A major challenge in tackling issues related to domestic violence is that much abuse goes undetected and unreported. It is therefore difficult to estimate the scale of the problem solely on the basis of official data released by the Public Security Department or the Department of State. Qualitative research indicates that domestic violence is widespread. A recent publication noted that only 7.5 percent of all abuse cases are reported.

Between March and October 1998, the Jordanian Women’s Union received over 1500 complaints from victims of domestic violence. Most of these cases were neither taken to court nor pursued in any other way. Reports indicate that a major factor in this non-pursuit of complaints is that houses are owned by the male perpetrators, and mortgages and rental contracts are in their names. If women were to report abuse, where would they go to live?

2.3.6.3 ‘Honour killings’
The most extreme form of abuse of women’s rights is that which results in death. In Jordan, there are disturbingly frequent cases in which a woman is murdered by one or more male members of her family, in the name of the family’s ‘honour’. These so-called ‘honour killings’ have received much attention and criticism from certain sectors of Jordanian society, women’s groups and the international community. The real scale of the problem is unknown; on average, the police deal with around 20 to 25 such cases every year. These numbers may be misleading: obviously, some killings go unreported or are mislabelled as other crimes. The death of the woman may be explained as suicide whereas, in reality, she was killed ‘to preserve the family honour’.

Sections 98 and 340 of the Jordanian Penal Code have been invoked to exonerate the perpetrators of ‘honour killings’ or to reduce their penalty. In 2001, a temporary law was adopted with a view to amending Section 340 in two ways: (i) to accord the perpetrator a reduction in penalty instead of

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150 ORC Macro, Jordan Demographic and Health Survey, Department of Statistics, Amman, Jordan, 2002.
152 Ibid., p. 118.
153 See, for example, National Demographic and Health Survey (NHDR) 2004, Ch. 7, p. 115.
155 The Jordanian Women’s Union, one of Jordan’s oldest women’s organisations, is involved in lobbying for changes in law and promoting women’s rights and women’s participation in decision-making.
156 Faqir (n. 154 above).
158 Jordanian Penal Code No. 16 (1960).
159 Provisional Penal Law No. 86 (2002).
complete exoneration; and (2) to extend the mitigating effect to cases where the perpetrator is a woman. In 2003, the newly elected Parliament rejected this amendment.

No steps have been taken to repeal Section 98 of the Penal Code, which is the most frequently invoked legal provision for the exoneration of ‘honour killers’. It mitigates punishment for crimes committed in a ‘fit of fury’. Some families even entrust an underage son with the task of ‘punishing’ the ‘dishonoured’ female member, as such murderers may be sentenced to penalties as light as six months’ jail.

2.3.6.3.1 Protective custody for women at risk
Women who are accused of bringing their family name into disrepute are often taken into ‘protective’ custody to prevent male family members from harming them. According to official statistics, every year, around 50 to 60 women are placed in such custody for periods varying from several months to more than three years. A special centre has been built to house such women; in effect, they are deprived of their freedom even though they have not been charged with committing a crime.

In 2000, the UN Committee on the Elimination of Discrimination against Women (CEDAW) urged the Government of Jordan to replace protective custody with other types of protection for such potential victims.\textsuperscript{160}

2.3.6.4 Access to justice
Women’s ability to pursue their rights through formal legal processes also depends on the extent to which the law operates equally in the interests of women and men. According to the Jordanian Constitution, “judges are independent” and “the courts shall be open to all and free from any interference in their affairs.”\textsuperscript{161} Commentators on rights in Jordan note that, in reality, judges are regularly subjected to a variety of outside pressures and that “judicial recommendations and appointments are still often made on the basis of tribal affiliations and personal connections.”\textsuperscript{162}

Given the patriarchal nature of tribal systems, it cannot be assumed that they will function in the interests of women where these are perceived to run counter to the interests of male family members. Other commentators note that the legal process is inconsistent in its treatment of women, largely because the decisions of the male-dominated State structure and judiciary are influenced by two systems: on one hand, the formal law; on the other, the combined influences of those in power, public opinion, and social norms and values. “There is also the issue of the legal justice system and the calibre of the judges. It is clear that this system is influenced by political power structures in society.”\textsuperscript{163}

2.3.6.5 Increased prominence of women in positions of authority
Jordanian women gained the right to vote and the right to stand for election at national and local levels in 1974 and 1982 respectively. A six-seat quota for female members of parliament was established prior to the parliamentary elections of 2003 and, as a result, six women took seats (only 5.4 percent of the total membership). Only one woman had previously gained a seat in the Jordanian Parliament (in 1993).

Women are increasingly visible in positions of authority in Jordan: the score for the UNDP Gender Empowerment Measures (GEM) rose from 0.220 to 0.297 between 1995 and 2002. Provided that women in such positions make decisions that support gender equality (though this is not guaranteed), this increased prominence may create opportunities for future improvement of the status of women.\textsuperscript{164}

\textsuperscript{161} Constitution of Jordan, Arts. 97 and 101.
\textsuperscript{164} JHDR 2004 (n. 125 above), pp. 26-27.
2.3.7 Women's inheritance rights: law v. practice

2.3.7.1 Islamic rules of inheritance
Inheritance in Jordan follows the Islamic system laid down in the Qur’an and the Sunnah (the traditions of the Prophet Muhammad). The most important purpose of this system is to guarantee the material rights of the surviving family and relatives of the deceased.

Fundamental to this set of rules is that the male family members are duty-bound to protect and provide for the females and dependants that remain within the family. In recognition of this responsibility, the males are allocated a larger share of the family wealth. Thus, there is a clear balance between rights and responsibilities.

As explained in Subsection 1.3, above, the Islamic system of inheritance gives the deceased the right to dispose of up to one third of his or her property according to his or her instructions, as set out in a will. Before the deceased’s property can be distributed, the necessary burial expenses and his or her debts, if any, have to be paid. The will is then executed. The remaining property has to be shared among the statutory heirs according to fractions specified in the Shari’a.165

The customary and legal rules are clear and relatively well known. However, even though women have manifest rights of inheritance (albeit to less than the males in their family), in many cases the rules are not followed. The balanced rights and responsibilities within the extended family are being gradually superseded by a different set of interests focused on the individual and the nuclear family. In this process of transition, there will inevitably be cases where it is impossible to satisfy the interests of all potential heirs. From the perspective of upholding gender rights, women are losing some of the rights that are fundamental to their well-being and livelihood without gaining any compensatory benefit in terms of protection.

2.3.7.2 Inheritance rights realities
The following subsection summarises the key findings of interviews and focus-group discussions held with women from various parts of Jordan in order to identify their understanding of rights and, in particular, their experiences of inheritance.166 The women consulted were all members of grassroots activist groups and therefore probably had above-average understanding of rights. They were also confident enough to express opinions that, in other contexts, might be filtered out for fear of peer disapproval. It should be noted that the findings are consistent with those derived from similar research in Jordan.167


165 See Annex cited in Faqir (n. 154 above), op. cit.
166 Unless otherwise noted, all quotes within this subsection (2.3.7.2) are from interviews and focus-group discussions with women from various governorates in Jordan (Amman, Balqa’, Irbid, Jerash, Madaba and Zarqa), conducted by ZENID (see n. 106 above). These women, all members of the ZENID network, were invited to Amman for a meeting, held on 1 Dec. 2004, where all the interviews and discussions took place specifically in preparation for the present report.
167 See, for example, discussion on perceptions of rights in JHDR 2004 (n. 125 above), Ch. 7.
2.3.7.2.1 Lack of access to rights
The areas where these women recognised that they did not have access to rights were in many cases gender-related, and included:

- Inheritance rights (the discrepancy between the law and how it is applied in real life);
- The marriage right (many girls and women report being forced to marry a man without consideration of their opinions or desires);
- The right to employment;
- The right to health insurance; and
- The right to make decisions over their own lives and in positions of public influence.

2.3.7.2.2 Barriers to accessing inheritance rights
As the main barrier to accessing their inheritance rights, the women who were consulted most commonly cited the high cost – socially, as well as financially – of making a legal claim. In addition, it is hard to pursue a claim successfully when male family members are unwilling to cooperate:

My father died 26 years ago. My sister and I were young then ... I am building a house, so I asked my brother to give me some money to finish the building work, in return for my portion of the inheritance. But since then I have received nothing, nor have I benefited from my inheritance.

Others felt that it “depended on the individual woman”. They pointed out that education was a key factor: illiterate women are less able and likely to claim their rights than educated women are.

Many women reported that their father had chosen to deprive them of their inheritance rights, often with the support of other family members. There was strong consensus that mothers generally favoured sons in issues related to inheritance, and were therefore not necessarily sympathetic to their daughters’ claims. The women noted the desire to keep property within the usually patriarchal and tribal family system:

My father gave all his possessions to his sons because he was afraid of transferring the possessions of his family to his daughters’ husbands. We daughters were given a small amount of cash money in return.

This father deprived his daughters of their rights because he regarded their husbands as ‘strangers’.

Another woman recounted her experience as follows:

My mother and her sisters gave up their inheritance rights to their brothers. It was my father who convinced them to do so. He thinks it is ayb [shameful] to let women inherit from their fathers. In this way, he gains the respect of my uncles.

Some women were willing to forego their rights in favour of their brothers if the latter ‘needed the money’ and evoked ‘sympathy’. Others were subject to social pressure and/or potential ‘embarrassment’ by brothers. Some women feared that they might later regret foregoing their rights, or that the relatives to whom they had given up their rights might later neglect them. Here is one example:

My sisters and I decided to give our brother 170 m² of land from our portion of the inheritance. But when he died, his children refused to recognise this, and mistreated us.
2.3.7.2.3 Maintenance: males failing to meet their responsibilities

The Shari’a decrees that a woman’s male family members remain financially responsible for her even after she marries. Nevertheless, male relatives such as fathers and brothers often use this as a pretext for persuading the woman to turn over her share of the inheritance to them in return for a ‘guarantee’ of their continued support. However, once the inheritance is given up, that support is often not forthcoming. Many of the women who were consulted complained that male family members tended to be very good at claiming the inheritance, but failed to meet their responsibilities to protect dependent women and girls in the family.

One married woman with small children reported that her rich brother had asked her to give up her inheritance rights because he was temporarily in difficult circumstances. Not wanting to risk losing his support, she did so, thinking he would take care of her once through his hard times. However, this did not happen, and even after the death of her brother, she was mistreated by his children. They were now charging her an extortionate price for the land she was renting from them.

A married woman with one son and seven daughters explained how inheritance rights affected her. Her father, a very rich man from al-Mafraq, had recently died. During the olive-picking season following his death, the woman had many quarrels with her brothers. During one quarrel, one of her brothers hit her. He also hit their mother, who had to be taken to hospital. The woman noted:

“I didn’t go to court. Up to now, the inheritance has still not been distributed among the heirs according to the Islamic rules and Jordanian laws. I won’t give up my rights as I really need the money. When my father died, my brothers deceived my mother. They took advantage of her when she was grieving, and got her to sign a document that gave them the right to sell most of her possessions. But later she realised the content of the document she had signed, and she had the decision set aside.”

2.3.7.2.4 Losing rights through trickery

Women who were consulted told of how they or other women had been tricked out of their inheritance rights. They also pointed out that a woman’s illiteracy might make her easier to trick. Sometimes, they noted, the authorities responsible for implementing and monitoring inheritance procedures did not properly check the national registration numbers (assigned to all citizens of Jordan for identification purposes) of those involved.

- In some cases, a fully veiled woman would be used to fool the authorities into thinking that she was one of the rightful heirs. In other cases, an old man would pretend that he was the father bequeathing his property to his sons.
- A woman died with JD 140 000 (nearly US$ 200 000) in the bank. Her sister forged her signature on documents to get the money. Fortunately, this was discovered by the authorities and she was arrested. As a result, the dead woman's daughter did benefit from her inheritance rights.
- Two sons took advantage of an illiterate man’s ignorance of the Shari’a inheritance rules by persuading him to put his fingerprint to a document that assigned the rights to his land exclusively to them. In this way, they deprived their sisters of their rights to that land.
- Two brothers wanted to keep the inheritance for themselves, so they dug up their father’s body, shortly after his burial, to get his fingerprint onto a document denying the women family members their rights. This trickery was exposed, though it is unclear whether the men were jailed.
- A father deprived his four daughters of their inheritance rights. His son, who lived abroad, encouraged him to do so even though he himself was rich. The brother then gave each of his sisters a paltry JD 500 (over US$ 700) in return and threatened to break off his relations with them if they refused the deal.

168 Mary F. Radford (Professor of Law, Georgia State University College of Law), ‘The Inheritance Rights of Women under Jewish and Islamic Law’, http://www.bc.edu/bc_org/avp/law/lwsch/journals/bcslrlr23_2/01_TXT.htm
170 Ibid.
2.3.7.2.5 Reasons for claiming rights
Despite all the barriers, increasing numbers of women are claiming their inheritance rights. Those who had made successful claims reported feeling “positive” and “relief that I can support my family.” Some noted that they were motivated by a desire “to keep my dignity if I remain single”. Most said that they had claimed their rights purely for economic reasons, like the following determined woman.

I was 12 years old when my father died, leaving land and a house. Now I am 40 years old and married. I have many commitments and responsibilities towards my family. I decided to claim my inheritance rights, and I will not give up.

Many women were well aware that if they claimed their rights there might be a negative reaction from their family and the broader community. Some women reported being accused of acting contrary to custom or even shamefully. However, some were adamant that they knew their rights and would stand up for them — they knew it was not shameful to do so.

Often, when women claim their rights they do so with encouragement from certain family members, but at the risk of losing the support of others. Some women noted that tacit support had indeed been given: “My sisters encouraged me in an indirect way.” One woman told of a successful inheritance claim that she had made with encouragement from her son, who told her she should press her claim because Jordanian law would protect her. She did so, successfully getting the claim through court, but in the end was ostracised by her brothers.

Of course, the husband is also directly affected by, and may influence, his wife’s decision as to whether to pursue her inheritance rights or forego them. It was reported by some women that their husband was worried that his wife’s claim might cause family problems and earn him a bad reputation among his wife’s brothers. Other women had experienced the opposite, reporting pressure from their husband to claim their inheritance rights from their father or other male relatives, as in this case:

After the death of my aunt’s father, her husband started to abuse her. He hit her to get her to claim her inheritance rights. Once she had received her inheritance share, he started to treat her well, to respect her and then buy her whatever she wanted. She bought a taxi and registered half of it in her husband’s name.

Of course, in many cases where women had claimed their inheritance rights in the interest of their husband, this had put the women at odds with their natal families.

2.3.8 Advances in women’s housing, land and inheritance rights
2.3.8.1 Organisations advocating for women’s rights
The Jordanian National Commission for Women (JNCW) is mandated to advise the Government on policy issues related to women. However, the JNCW has no capacity to hear individual complaints and lacks any decision-making or enforcement power. It acts as an umbrella organisation for the main women’s organisations in the country: the Jordanian National Forum for Women, the Jordanian Women’s Union, and the General Federation of Jordanian Women. Together they work to build alliances with the Government and the Parliament and to provide a supportive environment in which dialogue between different interest groups can be stimulated and maintained. The first and foremost of these national organisations, the Jordanian National Forum for Women, with some 100 000 members, reaches out at community level across the whole Kingdom. This ensures that its areas of focus are grounded in grassroots realities. There are numerous smaller organisations working actively to promote women’s rights in Jordan.
2.3.8.1.1 The National Centre for Human Rights

The National Centre for Human Rights (NCHR) was established in 2003 by virtue of Temporary Law No. 75 (2002). Its mission to promote human rights principles in the Kingdom is threefold:

1) to contribute to entrenching these principles – including that of non-discrimination on the basis of race, religion, language or sex – at both the intellectual and the practical level;

2) to bolster democratic processes in the Kingdom through disseminating freedoms, safeguarding political pluralism, respecting the rule of law and guaranteeing the right to economic, social and cultural development; and

3) to strive to ensure the Kingdom’s accession to Arab and international rights charters and conventions.

The NCHR can act as a mediator between the Government and the people. It has a mandate to monitor violations of human rights, register complaints, and follow up on their resolution. The NCHR must also inform citizens of their legal rights as guaranteed by the Constitution, pursue the correct application of laws and international conventions, and provide free legal advice to the poor. Such an institution could provide significant resources for poor people, especially women, to claim their property and inheritance rights. Indeed, organisations like the Sweileh Community Centre are calling on its services. However, the NCHR is in its infancy, and it is unclear whether it will be able to fulfil its mandate.

The raised profile of women in Jordan’s major NGOs has ensured that there are positive role models for women to promote active engagement in social and cultural change processes. In particular, the combined efforts of the Sisterhood Is Global Institute (SIGI) and the MIZAN Law Group for Human Rights have raised the profile of advocacy for women’s legal rights in Jordan, and are ensuring that women have access to legal counselling to assist them in claiming their rights.

The quota of women in the Jordanian Parliament, although limited to six and liable to be interpreted as a ‘token’ gesture, does pave the way for other women to engage in democratic processes. As decentralisation progresses, there are those who believe that women will find a more supportive entry point in municipal elections.171

2.3.8.2 Work to improve the inheritance rights situation for women

Grassroots organisations such as the rights-based Sweileh Community Centre in Amman report that women are now more vocal in speaking out about their desire to claim their inheritance rights. They are gaining strength and a platform through collective action, which empowers them to claim their individual rights even when their family members are hostile. Such collective action provides a model for other community groups, and is being replicated, for example, under ZENID’s Women’s Empowerment, Democracy and Government (WEDGES) programme in Jerash, Madaba and Karak. This work is also carried out across Jordan through the ‘Core Research’ teams jointly operated by ZENID and the Jordanian National Forum for Women.

The legal rights training provided by organisations including the Nour Hussein Foundation (NHF) is raising community groups’ awareness of inheritance issues. In Sweileh, legal literacy modules have been added to the existing women’s literacy programme to combat the situation, reported in Subsection 2.3.7.2.4, above, of illiterate women being tricked out of their rights. Also in Sweileh, the NHF is giving women access to lawyers who advise local claimants. The Jordanian Hashemite Fund for Human Development (JOHUD) is developing a ‘database for the poor’ that explains their legal rights. This initiative also provides user-friendly guidance on how to claim rights, with simplified instructions explaining bureaucratic procedures. These instructions are written ‘by the poor, for the poor’.

171 See JHDR 2004 (n. 125 above), Ch. 8.
2.3.9 Conclusions and recommendations

The case studies reported and the views reproduced above compellingly indicate the complex forces at play when women's inheritance rights are claimed, foregone or contested. The interplay of religious, social, economic and legal factors creates tensions where what is ‘moral’ or ‘fair’ is interpreted very differently by different actors. In certain communities with access to information and support, women are becoming increasingly vocal in claiming their inheritance rights. The women recognise that, in many cases, the existing practices fail to meet the standards either of customary tribal law or of the Shari'a as these relate to the complementary roles of males and females. Simply stated, many males are exercising their rights without shouldering their responsibilities — so why should women not claim their rights?

In this context, and given the major social, economic and political changes occurring in Jordan, many women believe that their interests would be better served through the application of formal laws and through recourse to the State judicial institutions. For some time, women's groups have been advocating for the amending or strengthening of the existing policies, institutions and processes that govern women's claims to enjoy their rights. In this respect, advances are being made.

2.3.9.1 Recommendations regarding inheritance rights

2.3.9.1.1 To the international system and community

• Continue to promote gender rights and be willing to challenge the State when it fails to comply with agreed commitments.
• Fund civil society organisations advocating for women's social and economic rights to the benefit of poor and marginalised women.

2.3.9.1.2 To regional organisations

• Create a common platform for action and look to existing policies that are positive for women; for example, those in Tunisia.

2.3.9.1.3 To the Government and NGOs

• Of immediate and urgent necessity — amend the personal status code and remove impunity for perpetrators of ‘honour killings’.
• Fully implement the recommendations of the National Human Development Reports, (Chapter 7: Claiming Gender Rights) to put policy into effect, challenge discriminatory practices in institutions, promote women's empowerment, and monitor outcomes for gender equity.
• Review housing policies with a view to protecting women's security in the home.
• Support public campaigns designed to raise awareness of women's inheritance rights.
• Extend free legal aid services (as the NCHR does) throughout the Kingdom to assist women in claiming their inheritance rights.
• Implement the long-promised reform of the judiciary (and the public sector, etc.) with a genuine commitment to equity and transparency.

2.3.9.1.4 To NGOs exclusively

• Unite to promote a human-rights based approach to all development work in order to create an enabling environment in which all excluded groups can claim their rights.
• Advocate for and with the poor and women who bravely challenge patriarchal authority.

2.3.9.1.5 To communities and those who work with them to promote women's rights

• Raise awareness in communities about rights.
• Claim your entitlements in accordance with your legal rights.
• Work collectively and provide mutual support to others, under the motto of ‘strength in unity’.
• Work together to improve housing conditions.
• Apply peer pressure in the community; break the silence and speak out against domestic violence.
2.4 LEBANON

2.4.1 General introduction to the country

From the time of the ancient Phoenicians, Lebanon has been home to many Middle Eastern civilisations. In 1516, the region came under Turkish Ottoman rule, though it maintained a considerable degree of autonomy. In the nineteenth century, with the increasing presence of Europeans in the region, the pillars of Turkish power started to crumble. As conflicts erupted between the Maronite and the Druze communities (see Glossary), the French intervened in the region and pressured the Sultan of the Ottoman Empire to appoint a Christian governor for Mount Lebanon (the mountain range extending almost the entire length of Lebanon, parallel to the Mediterranean coast) and recognise its status as a privileged administrative region.

With the demise of the Ottoman Empire following the First World War, Lebanon came under French authority as a part of the Syrian mandate defined by the League of Nations. On 1 September 1920, the French High Commissioner in Beirut officially announced the birth of the State of Greater Lebanon, separate from Syria, with Beirut as its capital. In 1926, with the promulgation of the Constitution, the Lebanese Republic was born. After the conquest of the Lebanese coast by British forces and liberation from French rule in 1941, elections were held in 1943 and independence was proclaimed on 1 January 1944.

Lebanon's recent history has also been marked by struggles and conflict. The development of the country has been gravely impeded due to civil war, which raged from 1975 to 1990 and was accompanied by severe political turmoil. The Lebanese Civil War originated in the conflicts and political compromises of Lebanon's colonial period and was exacerbated by the nation's demographic trends, strife between the Christian and Muslim communities, and proximity to Syria and Israel. Not only were the economic and civil infrastructures destroyed — in general, the surviving population emerged from the war traumatised by the violence and destruction.

The massive human displacement and the dismantling of familial and social support had particularly negative impacts on women, who were forced to assume new and difficult responsibilities during the long years of bombardment and urban fighting.

The war caused enormous casualties and large-scale emigration of men. This resulted in the adoption of new social roles by women and, among other things, entailed an unprecedented increase in the number of households headed by women. Today, this number is estimated to be 14 percent of the total number of households in the country and 20 percent of those in the Beirut urban area. On the positive side, as the war gave the Lebanese woman more responsibilities, so it also made her more aware of her status in society and gave her a stronger voice.

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172 This country report (Subsection 2.4) was prepared by Noushig Etyemezian, Zeina Mohanna and Noor Obeid of the Foundation for Human and Humanitarian Rights, Beirut, Lebanon.
173 http://www.law.emory.edu/IFL/index2.html
174 A Christian sect. At approximately one-quarter of the population, the Lebanese Maronites are the country's second largest ethnopolitical group. They reside mainly in Beirut and its suburbs.
175 The Druze are a religious community of Syria, Lebanon, Israel and Jordan, with important overseas branches in the Americas and Australia. The religious leadership prefers the name Muwahhidun (Unitarians). While preserving many Islamic symbols, the Druze religion also incorporates Gnostic and neo-Platonic tenets.
178 This mandate lasted from 1918 to 1943.
179 On 23 May 1926. The Constitution has undergone a series of amendments, the most recent being the Charter of Lebanese National Reconciliation (Ta’if Accord) of Oct. 1989.
The effects of the civil war are still felt, though in varied degrees, throughout the country. Among these effects are emotional instability, insecurity, individualism, lack of trust, fear, and ‘short-sightedness’: the Lebanese are inclined to plan only for their immediate, individual affairs and ignore long-term collective projects. This makes it very hard to tackle issues such as human rights, democratisation and the enhancement of civil society.

Recent data also show a shift in family-life patterns, with regional variations and rural-urban disparity. Endogamy (the practice of marrying within one’s own social group) is declining, while recourse to family planning methods is increasing. The annual population growth rate has fallen: from 2.5 percent in 1970 to 1.3 percent between 1996 and 2001. The average number of family members has also fallen: from 5.3 in 1970 to 4.6 in 2001. Families in Beirut have an average of 3.9 members. Along with the increase in the number of woman-headed households, the notion of joint family leadership is emerging, especially in cities.\footnote{Ibid. pp. 8, 9.}

The structure of the Lebanese State as manifest in its main institutions is still marked by political confessionalism,\footnote{The confessionalist system, which was established by the 1943 National Pact, allocates top government positions according to a sectarian division: the president is a Maronite (Catholic), the prime minister is a Sunni Muslim and the speaker of Parliament is a Shi’i Muslim.} though Article 95 of the Constitution states that this should be abolished in accordance with a transition plan to be proposed by a National Committee.

\section*{2.4.1.1 Religious composition}

The last official census in Lebanon was conducted in 1932. As there are no accurate data on the present population, all that can be asserted with certainty is that it is composed of a Muslim majority and a large Christian minority. Shi’i Muslims form the largest community,\footnote{‘Lebanon’, Encyclopædia Britannica (from Encyclopædia Britannica Premium Service), http://www.britannica.com/eb/article?tocId=23393 [accessed 1 July 2005].} though 18 different confessional groups or religious sects (within the Christian and Islamic faiths) are officially recognised in the country.\footnote{These groups or sects are: Catholic Maronites, Catholic Melkites, Armenian Catholics, Syrian Catholics, Roman Catholics, Chaldeans, Greek Orthodox, Armenian Orthodox, Copts, Assyrian Orthodox, Syrian Orthodox, Nestorian Orthodox, Evangelicals, Sunni Muslims, Shi’i Muslims, Druze, Alawites and Ismacilis.}

The religious composition of the Lebanese population has a direct impact on the legal status of women, especially as far as their rights in family relations are concerned. The Lebanese Constitution, in Article 9 concerning freedom of belief, guarantees that:

\begin{quote}
[T]he personal status and religious interests of the population, to whatever religious sect they belong, is respected.\footnote{http://www.oefre.unibe.ch/law/ci/le00000_.html}
\end{quote}

The Lebanese Constitutional Council has also confirmed the status of religious communities, affirming that the Constitution:

\begin{quote}
[\text{R}ecognizes the artificial [sic] personality of the religious communities, on the one hand, and their autonomy to manage their own affairs on the other, and consequently their right to defend their autonomy and their own particular religious characteristics.}\footnote{Decision No. 1/99 of 23 Nov. 1999, quoted in: CEDAW, Second Periodic Report of Lebanon (n. 182 above), p. 28.}
\end{quote}

On this constitutional basis, legal pluralism pertaining to personal status has two aspects: (1) the normative aspect, as reflected in the plurality of laws and rules that govern the personal status of members of the various religious communities; and (2) the institutional aspect, through the existence of independent religious courts for each group which have exclusive oversight over the settlement of disputes related to matters of personal status.\footnote{For the Christian groups, the jurisdiction of religious authorities is based on the Personal Status Law of 3 April 1951. For the Muslim groups, this jurisdiction is based on the Law on Organisation of the Shari’a Courts of 6 July 1962. The general basis for the recognition of the status of confessional communities is Order No. 60/LR of 13 Mar. 1936.} In other words:

\begin{quote}
[E]ach denomination has its own courts, laws and code of procedure and is completely independent of the civil judiciary.\footnote{CEDAW, Initial Report of Lebanon (n. 181 above), p. 16.}
\end{quote}
Family law as based on the laws of the various religious communities does not favour women’s equality, for it subjugates claims of women’s equality to what are regarded as the ‘superior interests’ of preserving the community’s distinct identity. In each religious community, rules pertaining to personal status are perceived to be an essential component of that identity. Across the board, as well, personal status laws have the same quality of subjugation:

[W]omen are considered subordinate to men, are expected to be obedient to them, and are subject to their will, while being deprived of all authority both in the home and over the children, their rights being oppressed and subject to religious court.\(^\text{191}\)

In this regard, the Lebanese State takes a very delicate stance — it tries to preserve its position of neutral arbitrator, guaranteeing equal respect for the independence and authority of each religious community in settling its internal problems. The State limits its intervention to the settlement of conflicts arising from interfering competences of different confessional authorities, and abstains from any kind of intervention in the substantial rules or decisions laid down by and within those authorities. Given this cautious attitude of the State — indeed, its general unwillingness to meddle in the affairs of the confessional communities — progressive reform of Lebanon’s personal status laws seems highly improbable.\(^\text{192}\)

According to Lebanon’s second periodic report to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), the religious courts are “distinctly male-oriented”.\(^\text{193}\) So far, only one woman – a member of the Evangelical community – has been appointed to a religious court.\(^\text{194}\)

To improve this state of affairs, defenders of women’s rights have made several attempts to get a secular optional law of personal status introduced at the national level,\(^\text{195}\) to apply to people of any religious affiliation. This would give those who so wish the option of withdrawing from the application of discriminatory religious rules. However, this idea has been strongly resisted by the religious communities. The most recent unsuccessful attempt was in March 2002, when a petition demanding the drafting of a civil law of personal status failed to gather the minimum ten signatures of parliamentarians that are required for a proposal to be put to the vote.\(^\text{196}\)

In Lebanon, clearly, personal status is governed by a complex and fragmentary system of rules that depend on the religious affiliation of the person concerned. The same is true of women’s inheritance rights, as is shown in the following subsections, which describe the rules in greater detail.

\(^{191}\) Ibid. p. 21.
\(^{195}\) This idea has been advanced for various motives: to enhance national cohesion and unity, as well as to ensure greater respect for freedom of religious belief. See Gannagé (n. 192 above), p. 37.
\(^{196}\) Prior to this, on 18 Mar. 1998, a bill on optional civil marriage had been approved by a majority in the cabinet, but was never submitted to the parliament, provoking great protest on the part of groups defending women’s rights. See: CEDAW, Second Periodic Report of Lebanon (n. 182 above), p. 28.
2.4.2 Legal overview

2.4.2.1 Constitution

The preamble of the Lebanese Constitution embodies an explicit reference to the Charter of the United Nations and the Universal Declaration of Human Rights, stating that “the Government shall embody these principles in all fields and areas without exception.” Both of these international documents proclaim the principle of non-discrimination on the basis of sex.

The Constitution, in Article 7, guarantees equality before the law:

All Lebanese are equal before the law. They equally enjoy civil and political rights and equally are bound by public obligations and duties without any distinction.\textsuperscript{197}

The language of Article 7 is gender-neutral and applies to all Lebanese nationals, of either sex. In practice, however, the scope of these provisions has not been extended to overarch the law of the various religious communities, which have remained unaffected by State dictates. The State has neither appraised the rules of personal status within each religious community nor subjected those rules to the constitutional principle of gender equality.

The extent to which personal status laws cover diverse aspects of family life varies according to the specific characteristics of the religious community concerned. The authorities of the Muslim communities have always tended to consider that all financial aspects of family life, including maintenance and alimony, inheritance, and trusteeship of children, should be exclusively governed by Shari’a rules. The Christian communities place a greater importance on the sacrament of marriage and the effects ensuing from it, without clearly defining financial aspects of family life. Historically, indeed, the Christian communities of the Lebanon have usually submitted to the prevailing law. Under Ottoman rule, the Christians chose to be subject to the Hanafi school of Islam-inspired law,\textsuperscript{198} which was prevalent in the region at that time. After independence, the non-Muslim communities accepted the intervention of the national legislature in fields related to family life more readily than the Muslim communities. This is manifest in the fact that in matters relating to inheritance, a civil, secular law applies to the non-Muslims, while the various Muslim communities are governed by their own specific rules.

2.4.2.2 Marriage and divorce

Marriage and divorce are governed by the Code of Canons of Oriental Churches (Codex Canonum Ecclesiarius Orientalium)(1990), the Codified (Druze) Personal Status Law (1948) and the Law on the Rights of the Family (1962). The latter and the Ottoman Law of Family Rights (1917) apply to Sunni and Shi’a communities. The various Christian communities have their own specific personal status codes, with slight variations in the rules on formal and substantial questions.\textsuperscript{199}

There are no civil marriages in Lebanon. The Law of 2 April 1951 on personal status stipulates in Article 16 that a marriage concluded under civil jurisdiction in Lebanon by a Christian or Jewish Lebanese national is void. Nevertheless, Lebanese law recognises civil marriages concluded in a foreign country. Such a marriage can be registered in Lebanon, though it is governed by the law of the country where it was concluded.\textsuperscript{200} This provision gives some leeway, however indirectly, to couples who do not want their marriage to be subject to religious codes.\textsuperscript{201}

\textsuperscript{197} http://www.oefre.unibe.ch/law/icl/l00000_.html
\textsuperscript{198} Gannagé (n. 192 above), pp. 35-36.
\textsuperscript{199} The information in this section is largely based on Basile, Statut personnel et compétence judiciaire des communautés confessionnelles au Liban (Kaslik, 1993).
\textsuperscript{200} Order 146 L/R of 18 Nov. 1938, Art. 25.
\textsuperscript{201} Civil marriage in a foreign country is the only solution available to Lebanese nationals who want to marry outside their religious community, for the application of confessional rules strictly limits the possibility of mixed marriages in Lebanon: all the Christian communities prohibit marriage with non-Christians, and the Muslim communities only recognise the marriage of a Muslim man to a Jewish or Christian woman. The marriage of a Muslim woman to a non-Muslim man is void.
In general, Christian communities require that the marriage be celebrated by a religious dignitary or authorised priest, in principle in a church,\textsuperscript{202} in the presence of witnesses.\textsuperscript{203} Normally, after the celebration, the marriage is registered in the community registries.

For the Druze, the presence of a religious judge or Sheikh, or a person authorised by him, is necessary for the marriage act to be recognised. The Sheikh is in charge of registration. Polygyny and polygamy are outlawed according to Article 10 of the Druze Personal Status Code.

For Sunni and Shi’a Muslims respectively, Hanafi and Ja’fari judges of Shari’a courts have authority to celebrate and register the marriage. A marriage concluded in private (in the presence of two witnesses for Sunni Muslims, and without any witness for Shi’a Muslims) is valid if subsequently confirmed by a Shari’a court ruling. The formal requirements are minimal in Muslim marriage. Polygamy – up to four wives – is accepted without any restriction other than the requirement to treat co-wives equally.

For most of Lebanon’s religious communities, the legal consequences of marriage for the spouses are in line with a ‘traditional’ concept of family, placing the husband at the head of the household and authorising him to decide the place of residence and preside over all family matters. Accordingly, he is also obliged to provide for the family’s livelihood and residence. In return, the wife owes her husband obedience, deference and fidelity.

The latest legislation governing the Catholic communities has established equal rights and obligations for husband and wife in line with recent developments of Catholic doctrine.\textsuperscript{204} Mostly, the wife’s right to work is subject to the husband’s authorisation (at least in the Druze, Sunni and Shi’a Muslim, and Orthodox Armenian communities).

Divorce is prohibited for Catholics, while Orthodox and Evangelical Christian communities authorise judicial divorce only for predetermined causes,\textsuperscript{205} and normally at the request of the wronged party. Divorce is never granted simply on the basis of the mutual consent of spouses.

The Druze community only recognises judicial divorce applied for by either spouse and granted by a Madhhab judge. A marriage can be annulled by mutual consent before the judge and two witnesses. Once granted, divorce is irrevocable and creates a permanently indissoluble bar between former spouses.\textsuperscript{206} If the mother is granted child custody after divorcing, the ex-husband is obliged to support her and the children financially and provide them with housing.

2.4.2.2.1 Repudiation

According to rules that apply to Sunni and Shi’a Muslims, the husband has total discretion to repudiate his wife whenever he wishes, while the wife can only apply for judicial divorce on a few pre-determined grounds.

Among the Syrian Orthodox and Evangelical Christian communities, the wronged party has a right to compensation for the harm caused by divorce. The decision to grant child custody to the father or mother is made by a family court during the divorce proceedings. The same is true of the Druze community.

\textsuperscript{202} In the Evangelical community, the minister decides on the place of celebration of marriage with the agreement of the bride and groom.

\textsuperscript{203} Some communities, such as the Orthodox Armenian, require male witnesses (Personal Status Code of the Orthodox Armenian Community, Arts. 40-41). The Jewish rules require benediction in the presence of ten male witnesses (Personal Status Code of the Jewish Community, Arts. 102-5). However, only a few members of the Lebanese Jewish community remain in the country.


\textsuperscript{205} “Most Christian communities ... recently abandoned the principle of obedience in favour of that of partnership between the married couple”: CEDAW, Second Periodic Report of Lebanon (n. 182 above), p. 38.

\textsuperscript{206} These causes are adultery, apostasy, disappearance, absence, non-respect of matrimonial duties, attempted murder of the spouse, serious mental illness, condemnation for a crime (Greek and Armenian Orthodox), induced abortion (Greek and Syrian Orthodox), loss of virginity (Greek and Syrian Orthodox), brutal mistreatment (Armenian Orthodox only), disobedience on the part of the wife (Greek Orthodox only) and taking vows of religious life (Greek Orthodox only).

\textsuperscript{206} http://www.law.emory.edu/flf/index2.html
Among the Sunni and Shi’a Muslim communities, the husband's financial obligations towards his ex-wife are limited to maintenance during the waiting period of 'eddeh, during which she cannot remarry. In cases of judicial divorce on grounds of marital discord, the ex-husband may be ordered to pay appropriate compensation, especially if he is found to have been the wrongful party. Each party keeps the property that was originally in his or her name. There is no division of personally acquired property.

After divorce, the mother is given custody only over very young children. Among the Sunni Muslims and the Druze, the age limit is seven years for boys and nine years for girls. Among the Shi’a Muslims, it is two years for boys and seven years for girls. In the case of all other children, it is the father who is given custody.

Among the Shi’a Muslims, the country’s largest religious community, a trend in recent years (since the civil war ended) has been the practice of so-called 'temporary marriage' (zawaj el muta’a — marriage for the man's sexual pleasure). According to Al-Sayed Mohammad Hussein Fadlallah, a prominent Shi’a religious authority in Lebanon, a temporary wife has no right to maintenance (nafaqa) unless the marriage contract expressly includes this right for her. The children borne of such a marriage are legitimate, bear their father’s name and are allowed to inherit from him. However, the spouses may not inherit from each other. Even though marriage of this type has been endorsed by the Shi’a authorities, many community members consider the practice to be reprehensible and harmful to the stability of families.

2.4.2.3 Inheritance
In Lebanon, the legal aspects of inheritance are governed by two distinct regimes. The first is the secular law of succession governing non-Muslim communities and specific kinds of Muslim-owned property (that is, miri property, as well as pensions and indemnities due to employees). The second is Islam-inspired law of succession, which applies to mulk property of Muslim community members and varies in accordance with the jurisprudential characteristics of each Muslim sect.

2.4.2.3.1 Secular law of succession
In the French colonial administration's first step to secularise succession law, the Succession Law of 1929 governing testate succession of non-Muslims was adopted with the purpose of granting greater testamentary freedom to non-Muslims, who until then had been subject to the rigorous rules of the Hanafi school of Sunni Islam. However, this law did not cover intestate succession, to which Islamic rules continued to apply.

Thirty years later, the comprehensive Law of 23 June 1959 was adopted, which covers both testate and intestate succession of non-Muslims and is still in force today. Important characteristics that distinguish this law from the Islamic rules that previously applied are: (1) there is no distinction based on sex; (2) a larger share of the inheritance goes to the surviving spouse; and (3) various stages in succession are recognised, so the commonly occurring problem of orphaned grandchildren is addressed.

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207 A period, determined by the Shari’a, to wait and see whether the woman is pregnant.
208 Maintenance payments from husband to wife. (Also refers to a number of other ‘human obligations’)
210 http://www.wluml.org/english/pubsfulltxt.shtml?cmd%5B87%5D=i-87-2674
211 Originally, miri was property conceded by the Ottoman sultan to those who distinguished themselves in warfare. Theoretically, such property remained with the Sultan and only a right of exploitation was conceded. In practice, however, the government would leave the property entirely to the grantee’s discretion. The right of the latter was consolidated over time and transmitted through succession. The transmission of miri property is governed by the Law of 21 Feb. 1912, which stipulates equal rights for heirs of both sexes.
212 Governed by the Law of 5 Aug. 1974, which stipulates equality of sexes.
215 Ibid. pp. 64.
Even though the Law of 23 June 1959 stipulates that a difference in religious faith is no obstacle to inheritance, it makes no provision for applicability to Muslims: the law explicitly states that it applies strictly to non-Muslims. Even if they so choose, Muslims cannot be subject to the Succession Law.²¹⁶

The various Christian communities did not regard inheritance as a matter to be governed by religious rules. The Christians therefore welcomed the secularisation of succession.

².4.2.3.2 Succession among Muslim communities

During the French mandate period as well as after independence, as far as succession was concerned, Muslim communities strongly resisted all attempts at secularisation, and even codification of the Shari’a rules into secular law. Because of the religious significance of Shari’a rules governing succession, the Muslims insisted that it be completely removed from the scope of the Succession Law.

As it stands, succession among the Muslim communities is governed by classical non-codified rules of the Hanafi and Ja’fari doctrines for Sunni and Shi’a Muslims respectively, as part of the Shari’a.

The Sunni and Shi’a rules on succession have four interesting common features:

- The male heir’s share of the estate is double that of the female with the same degree of kinship.
- The widow’s share in her deceased husband’s estate is one-quarter if the deceased has no children and one-eighth if he does have children. In polygamous marriages, this share is to be divided among the co-wives.
- Children borne out of wedlock can inherit from their mother provided they are recognised as her children.²¹⁷
- The mahār is any debt due to the wife. If a husband dies having not paid his wife’s mahār, it is to be paid along with any other debts before the remaining legacy can be divided among the heirs.²¹⁸

Succession among the Sunni community differs from that among the Shi’a community in several respects. In general, the Hanafi (Sunni) rules as they apply in Lebanon have remained largely unreformed in comparison to those in other countries, where the same rules have formed the basis of legislation. However, Ja’fari (Shi’a) rules have evolved in Lebanon.

<table>
<thead>
<tr>
<th>SUNNI</th>
<th>SHI’A</th>
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<tbody>
<tr>
<td>The share of a single daughter is limited to half of the estate; if there are two or more daughters, they must share two-thirds of it. After the shares of other heirs who have a right to fixed shares are vested, the residue goes to distant relatives, such as uncles or cousins.²¹⁹</td>
<td>Three orders of heirs exist, classified by the degree of kinship to the deceased. No one from the more distant orders can inherit when an heir from a closer order is still alive.²²⁰</td>
</tr>
<tr>
<td>Representation is not admitted: no one may take the place of an heir.</td>
<td>According to Shi’a rules, grandchildren can represent their parents only if none of the deceased person’s immediate children have survived him/her.</td>
</tr>
<tr>
<td>A testator cannot dispose of more than one-third of his/her estate by will.</td>
<td>A testator may make a will for his/her entire estate, so long as such a will is witnessed and agreed to by the otherwise applicable heirs.²²¹</td>
</tr>
</tbody>
</table>

²¹⁶ Ibrahim Najjar, Les transmissions à titre gratuit, les successions (Librairie du Liban, 1983), pp. 60-61
²¹⁷ Ibid. p. 45.
²¹⁸ Ibid. p. 47.
²²⁰ Najjar (n. 216 above), pp. 51-52.
²²¹ Ibid. p. 52.
2.4.2.3 Druze succession
The Codified Druze Personal Status Law of 1948 regulates matters of succession for the Druze community. The Druze rules on succession differ from the Sunni and Shi'a rules in that they provide for unlimited testamentary freedom. Any person can dispose of his/her entire estate by will, and may even exclude all the legal heirs. In the absence of children, however, the surviving spouse does receive a reserved share.222

If there is no will, Sunni (Hanafi) rules of intestate succession are applied to the Druze, with the distinction that representation is admitted for the Druze in accordance with the Law of 23 June 1959 on succession.

2.4.2.4 Inheritance between members of different religious communities
According to the Shari'a, difference in religious faith is an obstacle to inheritance in the sense that a non-Muslim cannot inherit from a Muslim.

This rule has practical importance, for many Muslim men marry non-Muslim women (and vice versa) and people convert from Islam to other religions (and vice versa). Consequently, a difference in religion becomes a general obstacle to inheritance.223

People also convert from one sect to another within the same religious faith. Conversion from Sunni to Shi'a, for example, has a potential impact on succession. When there is a difference of sect between the deceased and the heirs, the principle for resolving a conflict is that the rules of the deceased's last official sect apply.224

On the one hand, State courts have the duty of ensuring that inter-communal law functions properly. The basic principle in this regard is equality of sects. On the other hand, the Constitution guarantees freedom of belief and conscience as an individual right. Conversion is unrestricted but may create a legal conflict. To strike a balance between these two concerns, the courts tend to refuse to sanction conversions manifestly based on the motive of benefiting from a more favourable law225 or on the intention of causing harm to others (see textbox below). Such conversions may be considered as fraudulent and devoid of legal effect, or be declared void by third parties.

In one case, a man converted to Islam with the intention of excluding his Christian relatives from his succession. The Appeal Court of Beirut recognised the conversion, but declared that the heirs had the right to claim the inheritance.226

2.4.3 Reality of legal application
People often find ways to circumvent laws in order to further their own interests. If such conduct becomes a pattern, it may strip the legal rules of their effectiveness, especially when authorities responsible for the application of the law tend to condone, or neglect to punish, such conduct.

222 Ibid. p. 54.
223 Ibid. p. 94.
224 Ibid. p. 95.
225 A good example would be a man converting to Islam to be able to benefit from its recognition of polygamy.
226 'Les mécanismes de protection de la liberté de conscience dans un Etat multicommunautaire. L'exemple libanais' in Gannagé (n. 192 above), p. 79.
Circumvention tactics may favour women’s equality, or may deprive women even of their unequal rights recognised in Lebanese law, as the following examples show:

- In Sunni families without male children, parents convert to the Shi’a sect to prevent the transmission of part of the legacy to distant heirs. This is because, according to the Shi’a rules, the existence of daughters excludes distant relatives from the inheritance.
- Non-Sunni Muslims are allowed to dispose of their property during their lifetime.
- Wills can be used in two ways: either to alleviate inequality or to increase it. For example, wills can be used to block the application of an egalitarian law such as the secular Succession Law that applies to non-Muslims.
- Even within religious communities whose rules provide for testamentary freedom and equality, the prevalence of traditional stereotypes relating to the social and economic roles of men and women still favour the disposition of estates to male children.

2.4.3.1 Legal constraints to women’s inheritance rights

There are legal constraints to equal inheritance rights for women in Lebanon. From an institutional point of view, inheritance and other questions pertaining to personal status fall under the jurisdiction of religious courts of the various religious communities. As these courts are typically composed of males only, they are usually discriminatory towards women.

State courts are only given the competence to hear a case when conflicting personal status rules are at play. However, even in such instances, they do not rule on the substance of the case; rather, their function is merely to determine which personal status code should apply. The actual application of the personal status code and the division of the estate is then determined by the religious courts. There are no checks and balances.

Furthermore, there is no judicial monitoring of whether specific laws are compatible with the constitutional principle of equality. However, as the Constitution does not explicitly prohibit gender-based discrimination, such a monitoring system, even if it did exist, would still not suffice.

2.4.4 Socio-cultural obstacles to inheritance

Traditional perceptions of the respective roles of men and women are largely reflected in the legal-religious rules governing family relations, as well as in labour and social security laws.

These laws are all grounded in the notion of a societal organisation in which men’s sphere of activity is the social and economic one, whereas women are expected to take care of the home and the welfare of the family members in the private sphere. This view assumes that a woman is financially supported by a male at each stage of her life: by her father, her brother, her husband and/or her son. Normally, the law does not consider her as a provider on the same footing as a man — working and earning money is perceived as an ‘unnecessary luxury’ for her. Two examples of this vision reflected in law are: (1) legal discrimination against women civil servants in respect of family allowance for children; and (2) income tax deduction for those with children.227

Viewed from this perspective, Lebanese society generally regards women’s inheritance rights as being of negligible importance: working women are not considered to be deserving of privileges equal to those of men. Similarly, women in general are not entitled to the same share of inheritance as their brothers.

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The prevalent perceptions of traditional gender roles impede legal reform. Any attempt at introducing law to bring about positive changes for women is likely to be met with socio-cultural resistance. Such perceptions also influence practical arrangements relating to the distribution of shares of an estate: whereas capital, land, businesses and investments go to males, cash and/or the less valuable pieces of property go to females.

Religious authorities play a significant norm-setting role in Lebanese society, reinforcing the conservative cultural patterns of behaviour:

[T]heir authority is sacred for it is firmly established and is rarely concerned with the real and material changes that family structure and family members have undergone as a result of cultural evolution. On the contrary, religion acts sometimes as a brake on the socio-cultural expressions that are in harmony with the changing reality.228

These traditional perceptions persist even though the changing social realities increasingly deprive them of any rational justification. As mentioned in Subsection 2.4.1 (the general introduction to this country report), men are no longer the only providers in the family: 20 percent of families in Beirut are headed by a woman. Female heads of household are seriously disadvantaged by the lack of recognition of their economic and social role. The widespread poverty229 among them is compelling evidence of the obstacles they encounter in trying to access economic resources. Cultural stereotypes have definitely been instrumental in creating these obstacles: society in general refuses to recognise the role of these women as independent economic actors, and women remain at the mercy of males for their survival.

The deteriorating economic conditions in Lebanon have also had a great impact. With men less capable of bearing full financial responsibility for the household, women must often work in order to sustain the typical family. However, this reality has done little to enhance women’s status — either within the family or in society.

The stereotypical vision of male and female roles is sometimes so deeply internalised by women themselves that they readily relinquish their rights in favour of male family members. Alternatively, they are emotionally or physically coerced to do so by the family.

According to Lebanon’s second periodic report to CEDAW, perpetrators of domestic violence do not report such violence out of respect for the privacy (and thus sanctity) of the family. There is no specific law, direct or indirect, to combat domestic violence.230

The lack of focus on violence against women as an injustice and a violation of their fundamental human rights feeds into the state of affairs whereby women are made to concede their share of inheritance through violent means — an ever-increasing form of coercion.

2.4.5 Conclusions and recommendations

The inheritance rights of women in Lebanon are subject to many constraints. The legal system does not recognise that all Lebanese women should enjoy equal inheritance rights with men. The political and legal-religious systems that prevail in the country make any attempt to reform the inequitable laws extremely difficult. Indeed, the “sectarian quota system in political representation and in the functions exclude women since a denomination rarely accepts to be represented by a woman.”231
It is telling that out of the 128 members of Lebanon's parliament, only three are women — the first women in Lebanese history to have been elected to parliament.

Legal reform is absolutely necessary if the vulnerable economic and social status of women is to improve, for legal, or de jure, inequality entails and enhances real, or de facto, inequality. The current civil society campaign in favour of an optional secular personal status code, based on the principle of gender equality, should continue and be supported. Every citizen would be free to choose whether this code applies to him or her. More fundamentally, a constitutional provision should explicitly guarantee gender equality in the recognition, enjoyment and exercise of all human rights, regardless of religious laws.

Secular law in the field of personal status is necessary to combat entrenched religious rules which do not accommodate reformist perspectives. As things currently stand, within certain religious communities any attempt at reforming the rules that govern personal status is seen as an attack on the sanctity of the religion itself. This is often a baseless accusation, as reform wishes only to change those aspects of the religious rules that are harmful to women, not the religion itself.

It is important to engage religious authorities in debates on women’s rights. These authorities must be helped to see the unjust realities that women in Lebanon face today — realities which go against the very teachings of the country’s religions.

Equally important, finally, is the fight against cultural stereotypes relating to women's and men’s roles in day-to-day life. Education and advocacy must raise awareness of the difficulties women face due to unjust systems, and should create a recognition in society that women greatly contribute to family and community life, and should therefore benefit equally to men. Once the recognition of injustice and the will to claim justice for women prevails, the greatest obstacle to change will be eliminated. This may provide the impetus for fundamental reforms to the Lebanese political and legal system.
2.5 MOROCCO

2.5.1 Introduction

This country report investigates the legal, social and cultural obstacles that prevent women in Morocco from enjoying their rightful share of inheritance. It also evaluates possible solutions to the existing problems with a view to formulating policies that will allow women to obtain their rights in this area.

Before examining the current situation of women's inheritance rights (both in legislation and in practice), it is appropriate to consider the nature of Moroccan law, which is characterised by pluralism of its systems and rules. As explained below, this has negative and positive effects on women's rights.

The pluralism is a consequence of historical circumstances related mainly to Morocco's distinctive geographical situation both in the far Islamic West and in close contact with Europe. Generally speaking, the origins of the rule of law in Morocco can be divided into three categories: (1) customs and traditions; (2) Shari'a and Islamic jurisprudence; and (3) modern legal systems established during and after the colonial period.

This plurality of legal systems and rules is exemplified by the various regimes applicable to property and ownership thereof. Besides the system of reserved real estate (private land), which is administered by modern law of European origin, there is the system of non-reserved real estate (public land), which is governed by Islamic jurisprudence, and the systems of collective lands and army lands, both of which are governed by traditional rules.

Inheritance is also governed by a plurality of legal regimes. In addition to the Shari'a-derived rules, which represent the general law of inheritance, there are other exceptional regimes such as that governing the transfer of pensions and that governing collective lands. Such regimes embody both modern and traditional rules that do not agree with the rules of the Islamic family code.

Discrimination in the area of women's housing and property rights

In recent history, women in Morocco have achieved great gains in comparison to their counterparts in other Islamic countries. These positive changes are largely due to the efforts of women's groups and organisations struggling against a blatantly discriminatory system. Women are now able to play an integral role in society: they drive, vote, and work as government officials, lawyers, doctors, teachers, etc.

Despite these advances, women continue to be discriminated against in many aspects of their lives: in terms of employment opportunities, marriage and inheritance rights, and – predominantly – others’ attitudes. The perception that women should not have control over their own lives still pervades Moroccan society, even though it is hidden to some extent.

Nowhere is this reflected more clearly than in women's restricted access to property, land and housing. Although the Shari’a, which is based on the Qur’an, clearly allows women to own property, in practice the country’s deep-seated discrimination against women bars them from doing so. When women enjoy the benefits of adequate housing, this is almost always through the agency of a husband, father or other male relative — women are completely denied the possibility of owning housing, land and property in their own right. As few women are able to access credit and finance, they have great difficulty purchasing a home of their own. Discrimination against women in the area of rental property is also rampant, with landlords flatly refusing to rent to women, purely on the basis of their gender.

This country report (Subsection 2.5) was prepared by Professor Abdelkarim Khamlichi of the Association Démocratique des Femmes du Maroc (ADFM), Casablanca, Morocco.

In Morocco, it is estimated that over one million women live in illegal or slum conditions. This estimate is based on the official Government figure of 778,000 households living in unhealthy conditions, which includes those living in what are considered to be ‘illegal settlements’ – structures built without the necessary permits for amenities – as well as ‘slums’ (or shantytowns). It should be noted that neither type of settlement has basic services such as clean drinking water, sanitation and electricity near the home.

Generally in Morocco, informal settlements or slums are on the outskirts of cities, or even far outside them. This makes it difficult for their inhabitants to access educational opportunities, sources of income, and social facilities. This is especially hard on the women. In such situations, the men travel to the inner city to work, often staying there for the whole week or even month. Thus, the women are left alone to fend for themselves and the children, combating the lack of services and trying to provide enough food, water and other necessities for the family every day.

2.5.2 The law and women

2.5.2.1 The Constitution

Since achieving independence in 1956, Morocco has been building institutions and modernising its political system. The adoption of the first Constitution of the Kingdom by referendum in 1962 can be considered the most important step towards the eventual establishment of a democratic political system built on constitutional monarchy.

In the past four decades, the Moroccan Constitution has undergone four key reforms. The two most recent reviews of the Constitution, in 1992 and 1996, represent very important political reforms since they significantly changed the political system and instituted the rule of law.

The latest version of the Constitution recognises the legitimacy of international human rights law. In its preamble, the Constitution states that Morocco shall adhere to universally recognised human rights standards:

Aware of the necessity of setting its action within the context of the international organizations of which it is an active and energetic member, the Kingdom of Morocco subscribes to the principles, rights, and obligations resulting from the charters of the aforesaid organizations and reaffirms its attachment to the Human Rights as they are universally recognized.

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234 Figure provided by Ministère Délégué Chargé de l’Habitat et l’Urbanisme (Ministry of Housing and Urbanism), based on 2001 census.

235 The main stipulations of the 1992 Constitution are the following: adherence by the Kingdom of Morocco to human rights as internationally defined; appointment of ministers by the King on proposal of the Prime Minister; obligation of the Government to subject its programme to the approval by vote of the Chamber of Representatives; creation of a Constitutional Council with the power to rule on the frequency of parliamentary elections and referenda, as well as on the conformity of laws with the Constitution; upgrading of the Economic and Social Council to the level of a constitutional institution (which has yet to materialize); and the creation of a second Chamber of Parliament.

On 21 June 1993, Morocco signed and ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). However, the State’s signature and accession does not necessarily signify its agreement with all of the Convention’s provisions. Indeed, Morocco has submitted a number of declarations and reservations, citing in particular the Convention’s incompatibility with the Shari’a and Morocco’s Moudawana (Family Code; that is, personal status law). With regard to Article 16 (according equal rights and responsibilities to men and women vis-à-vis marriage), Morocco submitting the following:

“The Government of the Kingdom of Morocco makes a reservation with regard to the provisions of this Article, particularly those relating to the equality of men and women, in respect of rights and responsibilities on entry into and at dissolution of marriage. Equality of this kind is considered incompatible with the Islamic Shari’a, which guarantees to each of the spouses rights and responsibilities within a framework of equilibrium and complementarity in order to preserve the sacred bond of matrimony. The provisions of the Islamic Shari’a oblige the husband to provide a nuptial gift upon marriage and to support his family, while the wife is not required by law to support the family. Further, at dissolution of marriage, the husband is obliged to pay maintenance. In contrast, the wife enjoys complete freedom of disposition of her property during the marriage and upon its dissolution without supervision by the husband, the husband having no jurisdiction over his wife’s property. For these reasons, the Islamic Shari’a confers the right of divorce on a woman only by decision of a Shari’a judge.”

With regard to Article 15, paragraph 4 (affording women equal rights to choose domicile and residence), Morocco submitted the following:

“The Government of the Kingdom of Morocco declares that it can only be bound by the provisions of this paragraph, in particular those relating to the right of women to choose their residence and domicile, to the extent that they are not incompatible with Articles 34 and 36 of the Moroccan Code of Personal Status.”

Although the Government passed sweeping reforms of its Family Code in February 2004, it has not qualified or withdrawn any of its reservations to the CEDAW (as of 30 September 2005). Furthermore, Morocco is still subject to criticism from the United Nations Treaty Bodies, including the Human Rights Committee. It came under review in October 2004, and while the Committee welcomed Morocco’s reform of the Family Code, it commented on continuing inequalities in the new personal status laws. In its Concluding Observations, the Committee notes:

“30. The Committee regrets that the new Family Code, while placing limitations on the practice of polygamy, nevertheless does not ban it, despite the fact that it is detrimental to women’s dignity (Covenant, Arts. 3, 23 and 26). The State party should ban polygamy clearly and definitively (Covenant, Arts. 3, 23 and 26).

“33. While welcoming the adoption of the Family Code, the Committee notes with concern that inequalities between women and men persist in the area of inheritance and divorce. The State party should review its legislation and ensure that any gender-based discrimination in the area of inheritance or divorce is eliminated (Covenant, Art. 26).” [Emphasis added.]

COHRE urges the Government of Moroccan to withdraw all its reservations to the CEDAW and to continue the process of reforming its Family Code as recommended by the UN Human Rights Committee.
A general overview of the Constitution reveals two important declarations concerning the status of women and their rights. Firstly, the Constitution recognises women's political, civil and social rights on an equal footing with men; for example, in the following provisions:

All Moroccan citizens shall be equal before the law. (Art. 5)

Men and women shall enjoy equal political rights. Any citizen of age enjoying his or her civil and political rights shall be eligible to vote. (Art. 8)

Secondly, the latest version of the Constitution protects the right to private property and protects owners against expropriation by the State (Art. 15).

**THE MISSING PRINCIPLE OF NON-DISCRIMINATION**

The 1996 Constitution, like the previous version, does not contain a provision unequivocally barring discrimination against women. Although it states that: “All Moroccan citizens shall be equal before the law” (Article 5), the value of such a provision as a principle of non-discrimination is highly dependent on how it is construed and applied in particular contexts. By omission, the inference is that, where women's rights are concerned, the guarantee of non-discrimination in Article 5 is restricted. Thus, the Moroccan ulama, or Islamic religious authorities, assert that the personal status laws do not violate the constitutional guarantee of equality, because the constitution tacitly approves of the unequal treatment of women in the sphere of personal status. This discrimination is deeply entrenched in Moroccan society. Women remain victims of systemic discrimination and subordination, both in practice and in law.

Although these rights have acquired a constitutional status, they need to be translated into reality because women still suffer inequality in many areas of life. For example, despite the Constitution explicitly recognising the right to education (Art. 13), the illiteracy rate is very high: 33.8% for men and 61.9% for women.


Ibid.

2.5.2.2 The new Family Code of 2004

Since the 1990s, Morocco has accomplished a series of legislative reforms and amendments aimed at incorporating the principle of gender equality and harmonising national legislation with international standards. Various laws have been amended, but the new Family Code (Moudawana) of 2004 is the most important reform in this respect. The introduction of this new law was an important step towards eliminating forms of injustice suffered by women in the past and establishing the principle of gender-based equality of rights and duties in interfamilial relations.

The most notable reforms contained in the new Family Code are the following:

- Husband and wife have a joint responsibility for the family.\(^{246}\)
- Adult women are given the right to self-guardianship, which they may exercise “freely and independently”.\(^{247}\)
- Eighteen years is now the minimum age of marriage for both men and women.\(^{248}\)
- Polygamy is strictly limited and only permissible “under compelling circumstances and stringent restrictions, with the judge’s authorisation”.\(^{249}\)
- Divorce is subject to mutual consent and cannot be registered unless the husband has paid all sums of money due to his wife and children. Oral divorce cannot be accepted even in extraordinary situations.\(^{250}\)
- The granddaughter and grandson on the daughter’s side are granted “the right to inherit from their grandfather, just as the grandchildren on the son’s side, in keeping with the principles of \textit{ijtihad} (juridical reasoning) and justice in the compulsory legacy”.\(^{251}\)
- “Concerning the management of property acquired by the two spouses during marriage: while confirming the principle of separate marital property, the bill makes it possible for the couple to agree, in a document separate from the marriage contract, on a framework for managing assets acquired during marriage. In case of disagreement, the judge shall resort to general rules of evidence to assess each spouse’s contribution to the development of the family capital”.\(^{252}\)

Along with this reform of the Family Code, a few amendments were made to other laws:

- Chapter Five of the Commerce Code, which subjected the capacity of the wife to engage in commercial activities to her husband’s consent, was abolished.\(^{253}\)
- The Penal Code was amended so that either a husband or a wife can benefit from the regulation that provides for mitigated punishment of one who murders his or her spouse and the person with whom she or he is caught in the act of adultery (Article 418). According to the old text, only the husband benefited from this regulation.
- Article 491 of the Penal Code was amended to empower the Attorney General to prosecute the spouse committing adultery in a manifest way while the other spouse is not in the country. Formerly, in such a case, the Attorney General could only prosecute the wife, not the husband.
- The restriction on the woman’s capacity to lodge a civil complaint against her husband, namely the requirement that she obtain court authorisation for such, has been lifted. (New Code of Penal Procedure.)

\(^{249}\) Ibid., p. 7.
\(^{250}\) Ibid., p. 7.
\(^{251}\) Ibid., p. 8.
\(^{252}\) Ibid., p. 8.
2.5.3 Laws regulating inheritance

The general law applicable in the domain of inheritance is essentially embodied in the relevant rules of the Family Code (Moudawana). Besides these general rules, however, there are specific regimes and laws containing provisions that, under certain circumstances, contradict the requirements of the Family Code. Some of these regimes and laws improve women's inheritance rights, whereas others deprive women of any share of the legacy.

2.5.3.1 The Family Code

Inheritance is subject to the relevant articles of the Family Code. Because these provisions are very similar to what is applicable in most Arab and Islamic countries, it is appropriate to the purposes of this publication to briefly explain the main principles rather than elaborating on details:

- The female inherits half as much as the male having the same degree of kinship to the deceased. (For example, in the cases of daughter and son, as well as sister and brother.)
- Inheritance by ta’ssib is mostly limited to males and excludes females.
- Inheritance from Muslim to non-Muslim and vice versa is prohibited. Consequently, a non-Muslim wife cannot inherit the property of her Muslim husband.
- Bequeathing (inheritance by will) is only possible in favour of non-statutory heirs and is limited to one third of the inheritance.

Thus, according to the Family Code, and in accordance with the Shari’a, girls and women are entitled to a share of the inheritance even though this is usually less than that of the male. Although this Moroccan law and the Qur’an explicitly grant females their share, in practice circumventive tactics are often used to deprive them of this right.

The three most common tactics are the following:

1. The father bestowing a part or all of his property on his sons before he dies.

2. The father establishing an endowment (habous) exclusively benefiting his male descendants, or subjecting the inclusion of females to the condition that they be ‘in need’. The latter measure prevents the female descendants from disposing of the property and also prevents them from benefiting from it if they are married (because, in that case, their husbands are responsible for providing for them). Thus, the family wealth is kept in the hands of men, and no part of it can be transferred to the married daughters or their children.

3. The girl or woman ceding her share to her brother(s). Females may choose to do this in order to maintain good relations with their male relatives.

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255 The clauses of the Family Code stipulate the following: “Heirs by ta’ssib are but eight: son and the son’s son how low soever, brother and the father’s brother and their sons how low soever, paternal uncle and the father’s paternal uncle and their sons how low soever” (Family Code, Art. 338) [translated from the Arabic by the author]; “Those who are at the same time sharers and heirs by ta’ssib are two: the father and the grandfather” (ibid., Art. 339); “Those who are sharers or heirs by ta’ssib and cannot cumulate the two qualities are four: the daughter, the son’s daughter, the sister, and the father’s sister.” (Ibid., Art. 340.)

256 “No inheritance between the Muslim and the non-Muslim, and no inheritance between those whose kinship the Shari’a does not recognise” (Art. 332).
Unfortunately, since Islamic jurisprudence (fiqh) is nothing but an interpretation of the Shari'a by various jurists, who are inevitably influenced by their social and cultural environment, certain of these tactics have been falsely approved as jurisprudence.\(^{257}\)

1. Islamic jurisprudence considers **bestowal** to be valid if the sons that benefit have reached the age of majority at that time. If the children are still minors, it is sufficient for the father to have the bestowal witnessed and to declare that he holds the bestowed property as the legal representative of his sons. Thus, he continues to dispose of it and, after his death, it passes only to the sons — his daughters and wife get nothing. Islamic jurisprudence even authorises the father to bestow all his property on his sons and to suspend the transfer of all or part of it until his death, so that he can profit from it while still alive.\(^{258}\)

2. In cases of **endowment** where only the sons benefit and the daughters are excluded, there is disagreement: some opinions consider that the endowment is nullified by the underlying intention to exclude women from inheritance;\(^{259}\) others consider it to be valid.\(^{260}\) Some state that if the endower uses the phrase ‘endowed to my children’, it should be interpreted according to usage: if usage limits it to males, the females get nothing.\(^{261}\) If the endowment was made to the sons and daughters jointly, subject to the condition of the latter being ‘in need’, a daughter can benefit from her share as long as she is unmarried, divorced or widowed and is therefore obliged to return to her father’s home.

Islamic jurisprudence does, however, takes a firm stance against a female **ceding** her entire share to one or more of her brothers. Many jurists consider such a grant null and void because it deprives the female in question of her share of the inheritance — in clear contravention of what the Qur’an prescribes. Nevertheless, the reality is that many women and girls do cede their share to their brothers, whether out of free will or under pressure from family members.

A closer look at Moroccan legislation reveals the existence of some legal regimes and rules that constitute exceptions to the inheritance rules stated in the Code.

### 2.5.3.2 Exceptional regimes and rules relating to women’s inheritance rights

This subsection examines pension schemes and legislation on rental housing.

#### 2.5.3.2.1 Basic and complementary pension schemes

The Civil Pension Schemes, created by Decree No. 71.011 of 30 December 1971, entitle the widow of a male civil servant to 50 percent of the pension her husband actually received or could have received at the time of his death (Article 33). In addition, the deceased civil servant’s children who meet the required conditions receive 50 percent of the deceased’s pension. If there is no widow, the children can receive 100 percent of the pension. The pension is equally divided among the male and female children (Article 35). The deceased civil servant’s parents, if financially supported by him at the time of his death, receive a pension that they share in equal measures (Article 35/2).

\(^{257}\) Ahmad bin Muhammad al-Wansharisi, Al-Miyaar, Vol. I, pp. 262-263. Al-Miyaar is a collection of religious verdicts from the Maliki fiqh, which was compiled by Ahmad bin Muhammad al-Wansharisi in the early 10th century. It is printed and distributed in 13 volumes by the Government of Morocco.

\(^{258}\) Ibid., Vol. 9, p. 153.

\(^{259}\) Ibid., Vol. 7, p. 283.

\(^{260}\) Ibid., Vol. 8, p. 45.

\(^{261}\) Ibid., Vol. 7, p. 444.
An indication of complementary pension schemes is provided by the Complementary Retirement Scheme run by the National Fund for Retirement and Insurance.\textsuperscript{262} This entitles the widow to 50 percent of the points accrued by the member by the date of his death (Article 27). The children equally share the remaining 50 percent (Article 26).

Consideration of the rules governing these and other pension schemes,\textsuperscript{263} whether basic or complementary, leads to the conclusion that the only family members who can benefit from a male relative's pension are his widow and surviving children (including those disabled) and his parents (if financially dependent on the deceased). The fact that other heirs are excluded contradicts the inheritance articles in the Family Code. A pension is part of a deceased person's legacy; the capital of any complementary pension\textsuperscript{264} comprises deductions from the deceased person's salary.

In fact, these pension regimes (which were imported from Europe) are closer to the spirit and principles of the Shari'a than are the inheritance provisions of the Family Code. The pension schemes are in concord with the notion of (obligatory) bequest, for as the Qur'an itself stipulates:

\begin{quote}
It is decreed that when death approaches, those of you that leave property shall bequeath it equitably to parents and kindred. This is a duty incumbent on the righteous. \textit{(Surah 2, verse 180)}\textsuperscript{265}
\end{quote}

\textbf{2.5.3.2.2 Legislation on rental housing}

Article 698 of the Obligations and Contracts Code (Civil Code) stipulates that: “The rental agreement is not annulled as a result of the death of the tenant or the landlord”. Therefore, the rental agreement is transferred from the deceased renter to his heirs according to the general rules of inheritance embodied in the Family Code.

Contrary to this general rule, Law 6/7936 of 30 April 1980, which governs the contractual relations between landlord and tenant for both residential and commercial premises, states that the rental agreement continues to be effective after the tenant's death only if the deceased's spouse, his/her children who were legally under his/her guardianship, or his/her parents, were living with him/her at the time of his/her death (Article 18).

Article 18 is clearly incompatible with the general rules of inheritance in the following respects:

- Beneficiaries are restricted to the wife (or husband), children and parents who meet the required conditions.
- Absence of discrimination between males and females: there is no difference, for example, between the son and the daughter. In addition, the rule of ‘prohibition of inheritance between the Muslim and the non-Muslim’ is violated: the rental agreement is transferred to the deceased tenant's spouse irrespective of the latter's religious faith.

The intention of the legislator in establishing these provisions was to protect those living with and provided for by the deceased tenant from homelessness and to ensure that they continue to enjoy their prerogatives. Therefore, they benefit from the continuing rental agreement to the exclusion of other heirs.

\textsuperscript{262} This fund is a branch of the National Fund for Deposit.
\textsuperscript{263} For example, the military pension system created by Law No. 013-71 of 30 Dec. 1971.
\textsuperscript{264} As the capital of a basic pension comprises State contributions in addition to deductions from the pension holder's salary, the latter contributes only partially to the capital.
Although this stipulation contradicts the general rules of inheritance, it is in complete harmony with the notion of obligatory bequest deduced from the Qur'an, Surah 2, verse 180 (see final paragraph of Subsection 2.5.3.2.1, above) and with the principle that bequests and debts take priority over inheritance in law when the deceased estate is distributed. This is considered to be one of the basic principles of the inheritance system defined in the Qur'an: “after payment of any legacy he may have bequeathed or any debt he may have owed” (Surah 4, verses 11 & 12). 266

RENTAL DISCRIMINATION AGAINST WOMEN

An interview with the FAMA Centre of the Moroccan Association for Women's Rights 267 highlighted the extreme discrimination to which women are often subjected in issues of landlord-tenant relations. Reportedly, single women can rarely if ever rent property in their own right. The situation is changing gradually, but such discrimination is still prevalent.

Morocco has a system of rent regulation whereby a landlord can only ask for an increase in rent once every three years. Only if the tenant's income exceeds 1 500 dirhams (approx. US$ 175) can the landlord have the rent increased through a special legal process. Tenants are further protected by a law that guarantees that if a landlord owns more than two or three rental properties, he cannot remove the tenants by claiming that he himself needs to move into the property in question (normally, this is allowed only if it is the landlord's sole residence). If tenants can prove that they are paying rent, they cannot be removed in this way.

Women are often unlawfully evicted by landlords for no reason other than their gender. Usually, by the time women in this position ask for assistance from the FAMA Centre it is too late and the process is irreversible. Women, especially single women, are generally not informed of their rights by the landlord. They receive notice to move but do not know why. When they complain, the landlord simply warns them to move out or else .... Most women assume they have no alternative. Through the Centre's advocacy efforts, women are slowly becoming aware of their rights and how the various landlord-tenant laws can protect them.

2.5.3.3 Legal systems depriving women of their inheritance rights

Collective lands (also known as tribal or communal lands) are usually defined as lands owned by groups of inhabitants belonging to the same lineage. Such lands cover a total area of some 10 million acres (approx. 4 000 000 hectares) in Morocco. They cannot be sold. Until the early 20th century, they were exploited according to the customs of each tribe. During and after the colonial period, a host of laws were introduced to govern this type of land. As regards the rules governing inheritance of the right to exploitation, these laws remained in harmony with conveyed tribal traditions. However, as such, the right to exploit such lands is not inherited according to the rules of the Family Code, for in most cases only male heirs enjoy this right and women are excluded.

What is stated above in reference to collective lands also applies to so-called ‘army lands’, which, centuries ago, were uncultivated lands given to groups of men as a reward for their services in the sultanate army. The current area of these lands is estimated to be about 300 000 acres (approx. 120 000 hectares).

266 Ibid. This principle is articulated four times in the Qur'an:

“[4.11]Allah enjoins you concerning your children: The male shall have the equal of the portion of two females; then if they are more than two females, they shall have two-thirds of what the deceased has left; and if there is one, she shall have the half; and as for his parents, each of them shall have the sixth of what he has left if he has a child, but if he has no child and (only) his two parents inherit him, then his mother shall have the third; but if he has brothers, then his mother shall have the sixth after (the payment of) a bequest he may have bequeathed or a debt; your parents and your children, you know not which of them is the nearer to you in usefulness; this is an ordinance from Allah: Surely Allah is Knowing, Wise.

“[4.12] And you shall have half of what your wives leave if they have no child, but if they have a child, then you shall have a fourth of what they leave after (payment of) any bequest they may have bequeathed or a debt; and they shall have the fourth of what you leave if you have no child, but if you have a child then they shall have the eighth of what you leave after (payment of) a bequest you may have bequeathed or a debt; and if a man or a woman leaves property to be inherited by neither parents nor offspring, and he (or she) has a brother or a sister, then each of them two shall have the sixth, but if they are more than that, they shall be sharers in the third after (payment of) any bequest that may have been bequeathed or a debt which does not harm (others); this is an ordinance from Allah: and Allah is Knowing, Forbearing.”

2.5.4 Jurisprudential, cultural and social obstacles to women's inheritance

In addition to the legal obstacles to women's inheritance, there are jurisprudential ones relating to the meaning and interpretation of the Shari'a, as well as obstacles of a cultural and social nature.

2.5.4.1 Jurisprudential obstacles

There is a deeply rooted yet mistaken belief that the Qur'an clearly and comprehensively spells out the inheritance provisions that are incorporated in the Family Code. It follows from this belief that they cannot evolve and that all Muslims must obey and apply them without question or challenge.

Indeed, this stagnation of jurisprudential rules governing the family is considered to be the most important obstacle to women's greater enjoyment of their inheritance rights. The root causes of this stagnation are the confusion of the Shari'a with Islamic jurisprudence (fiqh), as well as a failure to relate the detailed modern provisions governing the family to the general rules and fundamental principles that are laid down in the Qur'an. These two aspects prevent reasoning and jurisprudential effort (ijtihad) that might otherwise enable women to secure more rights in the domain of inheritance and in general family life.

Only by distinguishing the Shari'a from its interpretation and by reading the detailed modern provisions of the Family Code in the light of the prescriptions of the Qur'an can the inheritance rules evolve appropriately.

2.5.4.2 Cultural and social obstacles

Although the Qur'an clearly establishes women's right to inheritance, in some cases women are deprived of their share because of the prevalent customs and value systems that actually govern practice and conduct.

Women are denied their share of inheritance mainly where land is involved: land is not regarded merely as a piece of property or as a means to satisfy material needs; rather, it is seen as requisite to confirming one's ancestry, lineage and place in the community — indeed, one's fundamental identity. It is also a way of clinging to the fundamental values on which community life has been established since ancient times. Thus, land ownership implies being faithful to tradition; it guarantees continuity from one generation to the next, while consolidating brotherhood. For these reasons, men remain attached to land even if it is unproductive. Although this meaning ascribed to land is lessening among the latest generations, women in the Rif region, for example, still rarely claim their share of inherited land.268

Hence women are excluded from inheritance in order to safeguard the family land — at least, that is the perception. Because women leave their parental home when they get married and because their children take their father's name, giving a woman a share in inheritance means giving it away to her husband, a stranger to the family. In contrast, a man remains an important member of the family even after marrying, and his children take his name. For this reason, although the Shari'a grants women the right to inherit, they are customarily denied their inheritance so that family land is not lost to 'outsiders', to the in-laws.

Women themselves may choose not to claim their inheritance share and to leave the estate as common property of all the siblings because they prefer to remain on good terms with their brothers and not risk losing the support and protection of their family. Claiming their share can lead to contention and tension with brothers and other male relatives — even with female family members.

268 Farida Khimlishi, ‘Offer and Immigration in Mid-Rif Region, the town of Huseina and the tribe of Beni Wirghal’, Ph.D. thesis in sociology (University of Rabat, Morocco: Faculty of Arts and Humanities, 2002), pp. 65-67.
Field research on inheritance in three villages in the Tasoute region shows that women in this region are regularly deprived of inheritance. However, according to the researcher their reaction varies: the prevailing attitude among poor women is to accept the *de facto* situation, though some women do claim their inheritance right by both judicial and non-judicial means.\(^\text{269}\)

Similar research confirms the existence of the same phenomenon in the southern region and Marrakech, where customary law prevails over the Shari‘a. Women are denied their inheritance lest strangers make the estate theirs through marriage or inheritance.\(^\text{270}\) The same researcher mentions the case of a woman who was denied her inheritance share and consequently hired a lawyer in Marrakech city in order to claim her right. Although the court decided in her favour, her husband refused to exploit the land since his wife had won its ownership against tradition.\(^\text{271}\)

**RURAL WOMEN**\(^\text{272}\)

Women in rural areas of Morocco do not have control over money. Legally, they can obtain title over land, but they are rarely in a position to do so or to use land as collateral to obtain credit. Women are therefore in dire need of alternative ways of accessing credit. There is neither a viable system of credit, nor a credit programme that would enable women to capitalise small enterprises.\(^\text{273}\)

The majority of rural women live in small, subsistence households where some combination of livestock husbandry with wheat and barley cultivation provides the main sustenance and income. Through raising sheep, women traditionally have made extra income by weaving rugs, cushions and blankets. Often, women textile producers belong to co-operatives, but the degree of autonomy women have in producing, selling and controlling the cash they earn depends considerably on where they live and the degree of male control over their lives.

Overwhelmingly, rural women are illiterate; in fact, rural illiteracy among women in Morocco is estimated to be 90 percent. Households headed by single females are common, for many men move to the cities or abroad to work, sometimes sending money home, sometimes abandoning their wives and families. Rural schools are overcrowded, and there is a lack of qualified teachers and resources for a proper education, as in urban slums.

Interestingly, it has been found that women's involvement in decision-making is greater in traditional subsistence households than in more market-oriented and monetised ones. In part, this may be a function of the existence of fewer cash-based decisions. However, it is probably also influenced by women's greater productive role in subsistence households. In highly vulnerable households, a small decision may often become a critical one, affecting the survival of the entire family, and is therefore more likely to be shared.\(^\text{276}\) Nevertheless, when money is involved, any decision will be viewed as that of the man, regardless of whether the woman contributed.
2.5.5 Conclusions and recommendations

This examination of women’s situation with regard to inheritance, from both a legal and a social perspective, has highlighted the existence of important legal, jurisprudential, social and cultural obstacles to women getting their rightful inheritance share. To bring about positive change, the following actions are recommended:

1. Further research should be conducted to more fully investigate the problem of inheritance rights violations and their impact on women, as well as their scope and relevant socio-economic variables.

2. In light of those findings, *ijtihad* (independent learned effort to interpret Islamic legal sources) should be exercised. The method to apply would be rational reasoning on jurisprudential and textual rules derived from the Qur’an. These should be reinterpreted and applied according to general principles and rules laid down in the Qur’an and in conformity with the notions of justice, equity and *Ma’ruf*.

3. A law should be enacted that would provide for the distribution of collective and army lands – especially those that are cultivable – so that they would become the property of the people who are entitled to them. (This right would automatically allow women to secure their inheritance right to these types of land).

4. Statutory and customary law governing the distribution of land and other real estate should be amended to give women easier access to it, and ownership of it, through inheritance and other means.

5. The Government of Morocco – in particular, the Ministerial Commission for Public Liberties, Human Rights and International Law – should immediately take the necessary steps to overcome and withdraw its reservations to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and to join the Optional Protocol to CEDAW. This would be in line with decisions taken by this Ministerial Commission on 21 February 2005, to overcome and withdraw reservations to several provisions of the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the Convention against Torture (CAT), and the Convention on the Rights of the Child (CRC).

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275 *Ma’ruf* denotes what is commonly known, understood and accepted within the community of Muslims. As this is certainly changing along with society, the rules governing family relations should be constantly reinterpreted.

276 As of 30 Sept. 2005, the Government of Morocco has neither qualified nor withdrawn any of its reservations to any of these UN treaties, [http://www.unhchr.ch/tbs/doc.nsf](http://www.unhchr.ch/tbs/doc.nsf).

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2.6 PALESTINE

2.6.1 Introduction

In general, Palestinian and Arab societies are formed by, and based on, closely knit relations. They have patriarchal structures, yet are often contradictory with regard to women's rights. In some instances, cultural and religious norms grant women protection and respect, yet the law may view them as dependent minors who are incapable of giving full testimony or receiving inheritance shares equal to those of their male relatives. Within this context, women are not seen as being capable of managing property on their own account.

In Palestine, women are still considered to be the ‘property’ of men and society; their behaviour and reputation is pivotal to the reputation and honour of their male relatives and the broader community. Complicity on the part of the family, as well as the influence of cultural and social norms, strengthen the concept of women as property and the perception that violence against female relatives is a private family matter rather than a public judicial one.

Within Palestinian society, the issue of women's rights to inheritance and to housing, land and property is highly contentious. Probably because violations of housing and land rights are the most common belligerent and punitive measures taken against the Palestinian people by the Israeli military occupiers, Palestinian men and women tend not to argue with each other over such rights, or, more precisely, issues related to such rights are seen as ‘internal’ and not the most immediate or pressing of matters. Although Palestinian women are actively struggling for their rights and trying to influence the Palestinian Authority (the interim administrative organisation that nominally governs the Palestinian Territories; that is, all of the Gaza Strip and parts of the West Bank), issues of inheritance and of housing, land and property are not high on their agenda.

In order to put the current rights situation of Palestinian women into context, particularly with regard to inheritance and housing, the following subsection takes a brief look at the recent legal and political history of the Palestinian people.

2.6.2 Legal and political history: colonised laws

Prior to the enforced exile of the Palestinian Diaspora during the 1948 Arab-Israeli War, Palestinians were united by their common national legal and political history. Since 1948, political geography has played a major role in shaping Palestinian's lives. In 1948, the historical lands of Palestine were partitioned by the United Nations: the State of Israel was declared as the larger partition. The other partition was placed under separate Jordanian and Egyptian mandates until 1967. On 5 June 1967, war broke out between Israel and the surrounding Arab States, namely Egypt, Jordan and Syria. This conflict culminated in the Israeli occupation of the remaining Palestinian lands that had been under Arab mandates, including the Syrian Golan Heights and the Egyptian Sinai Desert.

Long before the traumatic events of 1948 (known to Palestinians as al-nakbah, ‘the catastrophe’), Palestine had been part of what was called Greater Syria (modern-day Lebanon, Syria, Jordan and Palestine). That territory, like most of the Arab world, was subject to Ottoman rule until 1915. The Ottomans, who had ruled the area for almost 400 years, left the region in a state of considerable disorder, with widespread poverty and human displacement. After the defeat of the Turks in World War I, the Ottoman Empire collapsed and Palestine came under British control as a result of the Versailles Peace Conference of 1919.

This country report (Subsection 2.6) was prepared by Soraida A. Hussein of the Women's Centre for Legal Aid and Counselling (WCLAC), Jerusalem.

The British Mandate for Palestine (which then included what is now Jordan) was established in 1923 by the League of Nations (the forerunner of the United Nations). Certainly, those subject to Ottoman rule were greatly affected in terms of how their lives were directed. Towards the end of their rule, the Ottomans had codified a set of laws that applied in most parts of the Empire.

As far as family law was concerned, the Ottomans had promulgated personal status laws based on the Shari’a, which applied in most Arab countries, giving religious courts full authority in such matters. In 1869, the Ottomans collected the principles of Islamic civil law and set them down in a ‘code’ called al-Majallah al-Adiliya. The significance of this collection is that it was the first time the Ottomans made use of the flexibility of Islam-inspired law; previously they had applied only the authoritative opinion of the Hanafi (Sunni) school of law. They adopted provisions from other Islamic schools of thought, which made the law less restrictive than it had been prior to 1839. This was reflected in many areas, including divorce. A woman now had the right to seek the dissolution of her marriage on a number of grounds, including certain diseases afflicting the husband, his failure to maintain her, his absence, and injury. These grounds were not recognised by classical Hanafi law, which was extremely restrictive in this regard.

During the British Mandate, several laws were enacted to replace or modify various Ottoman laws. Changes included the recognition of non-Muslim religious communities; they were empowered to establish autonomous courts and to apply their own laws therein. However, the colonisers paid very little attention to the laws of personal status, and the legal principles that affected the position of women were left untouched. This is a common practice of colonisers; they tend not to deal with what they consider ‘internal matters’ of those under their occupation.

The later Israeli military occupation of 1967 transferred all powers of government to the Military Governor. In the first week of occupation, on 7 June 1967, he issued the following order:

All powers of government, legislation, appointment and administration in relation to the Area or its inhabitants shall henceforth be vested in me alone and shall be exercised by me or whoever shall be appointed by me to that end or acting on my behalf. (Article 3(a))

Despite the influence that the Israeli occupation exerted on almost all other legislation, the family laws remained untouched.

At a fundamental level, personal status laws form and organise the rules and dynamics of the Palestinian family; therefore, any changes to them can potentially tip the balance of power relations within the family and society at large. Clearly, over the past few centuries women’s legal rights in Palestine have been shaped primarily by Palestine’s colonisers: initially, through the fundamental (though incremental) changes to personal status laws effected by the Ottomans; and, subsequently, as a result of the indifference towards personal status laws shown by the British and then the Israelis, which left women’s rights in a state of stagnation.

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280 There are four schools of thought in Islamic jurisprudence. They differ from each other significantly, making Islam a religion open to what is called ijtihad (the process of making a legal decision by independent interpretation of the available legal sources).
281 Rishmawi (n. 279 above), p. 81.
282 Ibid.
2.6.3 Women's rights in an historical and legal context

The 1948 proclamation of the State of Israel by the United Nations brought about fundamental changes to the laws affecting women's everyday lives. The legal rights of Palestinian women are defined in a heterogeneous set of laws. Palestinian women living in the lands where Israel was established came under Israel's laws, those living in the areas known as 'the West Bank' came under Jordanian laws, and those living in the Gaza Strip came under Egyptian laws. Both Jordanian and Egyptian personal status laws were based on the historic Ottoman laws.

Palestinian women living in Israel proper (also known as 'Arab Israeli' women) face a number of problems: legally, they are considered Israeli citizens; culturally, they are Palestinian Arab women; religiously, they are either Christians or Muslims. Because they live in Israel, including in Israeli-annexed East Jerusalem, Israeli law applies to them. Muslims living in Israel, however, can chose whether they are subject to the Shari’a rules of inheritance or the Ottoman Law of Succession of 1913, as amended by the Women's Equal Rights Law of 1951. Although Israeli laws give Arab Israeli women more inheritance rights than their counterparts in the West Bank or Gaza Strip have, the unfortunate reality is that Palestinian women living in Israel experience double discrimination: firstly, because they are Arab; and secondly, because they are women.

This is apparent when labour statistics are examined. It is widely acknowledged that Arab Israeli women occupy the lowest rung of the employment ladder: in 1997, 80 percent of Arab Israeli women of working age were unemployed, compared to under 50 percent of all women nationwide. Statistics on Arab Israeli women's earnings are lacking, but on average Arab Israeli men earn 68 percent of the income of a Jewish man, while a Jewish woman earns 57 percent of that income. It can be reasonably assumed that, on average, Arab Israeli women earn less still. Palestinian women are doubly disadvantaged in employment.

This country report specifically examines issues affecting Palestinian women who live in the Gaza Strip and the West Bank. The legal rights, including inheritance rights, of Muslim women in those areas are mostly defined by the Personal Status Law, which is based on the Shari’a. The various religious courts that are subject to Byzantine Law adjudicate cases relating to the rights of Christian Palestinian women, each according to her own church (Orthodox, Latin, Catholic, Assyrian or Lutheran). The Orthodox churches and courts are part of the Greek Orthodox institutions, in which the applicable rules are those of the Byzantine Law of 1902.

Although Israel officially withdrew from the Gaza Strip in September 2005 under Prime Minister Ariel Sharon's 'Disengagement Plan', it still largely retains control of the Strip, especially as far as military and border control is concerned. Whether it must still be considered as an ‘occupying party’ is a matter of dispute. However, for the purposes of this country report, it should be noted that the withdrawal from Gaza has had no direct or discernable bearing on the personal status of women, which is still governed by the Shari’a-based Personal Status Law.

Women not only suffer the consequences of the currently applicable laws, which are often contradictory and impede women's participation in society; they also have to deal with the enormous complexity of the parallel legal systems wherever they meet in overlapping jurisdictions.284 A prime example of contradiction found in existing law is that between the Labour Law and the Personal Status Law. Whereas the former protects women's right to seek employment, the latter contains an article stipulating that women can only engage in activities outside the home, such as work, with their husband's permission.

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Inheritance is covered by the Personal Status Law, which also governs matters of marriage, divorce, maintenance, guardianship and custody. With regard to inheritance, Palestinian Christian women must abide by the Personal Status Law, which is based on the Islamic Shari’a. In divorce and all other matters, Christian women are governed by the rules of their own church.

The significance of inheritance rights is determined not only by the law, but also by economic interests, Islam, and local customs and culture.

According to the Islamic inheritance law that is applicable to Palestinians, male and female family members of the deceased have rights to shares of his or her legacy. However, when the shares of female members are compared with those of the males, it is clear that the latter take preference.

In Islam, inheritance rights are linked with obligations. The preference of male over female family members in inheritance law is explained by the man's financial obligations towards female members of the family; that is, their maintenance (nafaqa). A father is responsible for maintaining his daughters until they marry; he bears the same responsibility if and when they are divorced or widowed and have no means to support themselves. The father is also responsible for his sons until they reach adulthood. A husband is responsible for providing the marital home and fulfilling the needs of his wife and children; thus, the wife is not financially responsible for him, the house or the children during the marriage.

For the Palestinian people, arguably more so than for any other people in the world, the right to housing is closely linked to their existence and survival. As their land is confiscated mainly for the purpose of building Jewish colonies ("settlements"), and their houses are destroyed for a variety of reasons, including Israeli punitive measures, they experience the dispossession of their own communities while witnessing the growth and expansion of Jewish colonies close at hand. The Israeli planning and housing policies (applicable in annexed East Jerusalem and the occupied West Bank, and formerly in the Gaza Strip) are reflected in what are called ‘Absentees’ Property Laws’, as well as in residency laws and family reunification laws. These and other laws are based on the deliberate policy of taking from the Palestinians to give to the Israelis. (Arguably, Israel's 2005 pullout from the Gaza Strip is a notable exception to this policy.) Ever since the State of Israel was created in 1948, this policy has been ruthlessly implemented to expand Jewish colonisation, to subjugate and control the Palestinians, and to force them to flee their homes and their homeland in their millions in order to further 'secure' the State of Israel. All Israeli regulations applicable in annexed East Jerusalem and the occupied West Bank are designed to confine Palestinians to small portions of the land. Even though Israeli settlers have been evacuated from the Gaza Strip, military occupation and border control still make movement in and out of the Strip a near impossibility for Palestinians. This is, of course, a direct and blatant violation of their right to housing, not to mention a wide range of other rights.

The Palestinian people are not protected in any way from forced evictions perpetrated by the Israeli occupying forces, not as a people under occupation and not as citizens under the Palestinian Authority. They do not possess the means to protect their houses from being bulldozed, shelled and bombed, or their land from being confiscated. Forced eviction of Palestinians is an obviously illegal and internationally condemned measure that the Israeli occupiers have been practicing on a grand scale since 1948. It is evident that women suffer disproportionately from the impacts of forced eviction — not only directly from eviction itself, but also from the violence and trauma that often precede and follow an eviction.

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285 Ibid.
Lack of security of tenure is fundamental to the Israeli-Palestinian conflict. Palestinians have no protection under Israeli laws and regulations; on the contrary, specific Israeli laws are often enacted with the sole purpose of depriving Palestinians of secure tenure. Israeli housing and planning policies have been instrumental in reducing the Palestinian population while increasing the Israeli population, especially in annexed East Jerusalem. These policies include:

- Expanding Israeli municipal boundaries to include Palestinian land while excluding Palestinian people;
- Expropriating Palestinian land for Jewish construction and confining Palestinian construction to already developed areas;
- Excluding the Palestinian people from the planning process;
- Keeping Palestinian land undeveloped or declaring it as a ‘green area’ that cannot be used for housing;
- Demolishing unlicensed Palestinian homes to keep areas vacant for future confiscation for Israeli development.\(^{287}\)

Israel has enacted many laws to secure its control over Palestinian land. One of the most important is the Absentees’ Property Law, enacted in 1950, soon after the declaration of the State of Israel. This law stipulated that the land of any Palestinian deemed to have been ‘absent’ from his or her property between 29 November 1947 and May 1948, as broadly defined by the law itself, could be ‘legally confiscated’.\(^{288}\)

Since its inception, the Palestinian Authority has introduced no domestic legislation to give Palestinian men and women secure tenure. Based on the political settlement reached in Oslo in 1993 (the Oslo Accords), the Palestinian Authority is only able to secure tenure in certain areas until such time as a Palestinian State may be established.\(^{288}\) Ongoing tensions and conflict, with differing levels of intensity, have undermined the Oslo Accords and it is unclear what the geographical and power limits of the Palestinian Authority will be in the long term. Security concerns exist on both sides, and agreements have been violated; in particular, those on Jewish colonies in Palestinian territory. The situation is still very tense, and most Palestinians live in uncertainty as regards their tenure rights.

Besides the lack of any domestic law, regulation or policy to enable women to secure tenure, the Palestinian Authority has also made no clear or serious efforts to change social attitudes about women and the cultural practices that violate their rights and minimise their role in society.

Perhaps the most relevant provision of the Palestinian Basic Law,\(^{289}\) which was signed by the late PLO Chairman Yasser Arafat, is Article 23:

Adequate housing is a right for every citizen. The (Palestinian) National Authority shall endeavour to provide housing for all who have not \(\text{sic}\).\(^{290}\)
The same document contains two other pertinent provisions. Firstly, Article 10(2), which states that the Palestinian Authority will “join the international and regional documents and conventions which defend Human Rights.” Secondly, Article 17: “Houses are to be highly respected; they should not be examined, entered or searched without legal permission according to relevant laws. Those who suffer from an illegal treatment in this concern [sic] can ask to be compensated by the Palestinian National Authority.” Furthermore, in the latest draft version of the Palestinian Constitution, Article 42 states: “Houses are to be highly respected, they should not be checked, and only examined with legal permission and during light hours (not in the night).”

The Palestinian Authority cannot sign and ratify international human rights treaties because it is not an independent sovereign state, but is has unilaterally committed itself to abide by international law. However, it has not specified which international documents will be taken into consideration for ratification by a future independent Palestinian State. Therefore, it is unclear whether the International Covenant on Economic, Social and Cultural Rights will automatically be ratified. Also, the draft Palestinian Constitution does not contain a single article asserting the right of Palestinian citizens to adequate housing as articulated in the Basic Law.

The draft Palestinian Constitution declares that “basic human rights and freedom shall be granted and respected” (Article 1) and that “the Palestinian National Authority shall work without delay to join regional and international declarations and covenants that protect human rights” (Article 2). Article 9 adds that “all Palestinian are equal under the law and judiciary, without discrimination because of [sic] race, sex, colour, religion, political views, or disability.”

So far, the Palestinian Authority has been unable to give Palestinians their right to housing. It has failed to provide for and facilitate access to adequate housing — which it might have achieved by making grants readily available, especially to young couples, poor families and female headed-households. After the Oslo Accords, many observers believed that the opportunity to redress women's lack of fundamental rights had finally materialised. However, with regard to many women's rights, especially those related to access to and control of housing, land and property, the Authority took no action. Although women's role and participation in the rights struggle prior to Oslo are evident and widely recognised – at least, in principle – this is not reflected in the present reality. Indeed, in terms of their roles, participation and status in Palestinian society, women are now more marginalised than ever before. Palestinian women and their needs have not been taken into consideration in any negotiation process, and the women themselves have certainly not been consulted. This lack of recognition and involvement has seriously jeopardised the potential for progress towards realisation of women's rights.

2.6.4 Women’s housing rights under attack in Palestine

Against the unique political background of the Palestinian context, it is important to recognise the vital role women play within the household and to identify their relationship with the home. This needs to be done not just in the narrow framework of women's domestic responsibilities, but in the broader framework of their rights to inheritance, adequate housing and land.
For many women, “the home is the single most important place in the world. Beyond basic shelter, it is a place of employment where income is generated; it is a place to care for children...”

For some women, “the home may be the only place where they can participate in social activities.” The relationship that women have to their home is intimately connected to the social roles that they are expected to play. This importance is heightened for Palestinian women because most of them live under Israeli military occupation and control.

To be able to understand the situation of the right of Palestinian women to housing it is necessary to examine the Israeli measures against the Palestinian people in general and see how these affect power and gender relations. It is also important to consider the policies adopted and the legislation introduced by the Palestinian Authority, which project an image of the future situation for Palestinian women within an independent Palestinian State.

As most Palestinian women do not work outside the home, this is the only space they feel is their own. Men spend far more time outside the house engaging in work and social activities. Thus, taking care of the home and the family is women’s main responsibility and primary activity. Whether they work outside the home or not, women devote a significant amount of their time and energy to unremunerated and often overlooked work in the home, and are therefore particularly affected by forced eviction from, and destruction of, their homes. When families are made homeless, by whatever means, women shoulder the greatest burden when it comes to rebuilding the home or making a new one elsewhere.

House demolitions make whole families homeless. Often, these families have little or no means to rebuild their home or establish a new one; they have no alternative but to stay with relatives, friends or neighbours. Demolitions are often carried out at night, with no prior notice, so that the victims have no opportunity to collect their personal belongings. Families are made homeless and destitute, literally overnight, usually without clothes, furniture or even minimal resources and tools to rebuild their lives. The Al-Mezan Centre for Human Rights collated the following information on house demolitions in Gaza for the period from 2000 to 2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Completely destroyed</th>
<th>Partially destroyed</th>
<th>TOTAL (annual)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>115</td>
<td>99</td>
<td>214</td>
</tr>
<tr>
<td>2001</td>
<td>326</td>
<td>770</td>
<td>1096</td>
</tr>
<tr>
<td>2002</td>
<td>417</td>
<td>708</td>
<td>1125</td>
</tr>
<tr>
<td>2003</td>
<td>731</td>
<td>1032</td>
<td>1763</td>
</tr>
<tr>
<td>2004</td>
<td>1092</td>
<td>1067</td>
<td>2159</td>
</tr>
<tr>
<td>TOTAL (5 years)</td>
<td>2681</td>
<td>3676</td>
<td>6357</td>
</tr>
</tbody>
</table>

No law protects the housing rights of Palestinian women. When a woman divorces she is usually compelled by her family and/or circumstances to return to her parent’s home. A widow may be allowed to remain in the house she occupied with her deceased husband, but this will usually be determined by her family and broader community, who have considerable control and influence over her life. A wife who suffers domestic violence and wants to break off the relationship with her abusive husband invariably has no alternative but to return to her parents’ or a brother’s house. There is no legal, cultural or social

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296 Ibid.
297 Maisoun Filfil, The Housing Environment and Women’s Health: The Case Study of Ramallah al-Tahta (Birzeit, West Bank: Birzeit University, Institute of Community and Public Health, 1999).
298 Ibid.
recognition of the suffering and predicament of women in this position, and no legal protection to enable them to remain in the marital home with the children, if any, and bring the husband to justice. Women in polygamous marriages have no voice in deciding whether they can live in a separate house from their co-wives; this decision is usually made solely by the husband.

Despite everything that Palestinian society has been through in terms of Jewish colonisation, land fragmentation and dispossession, military oppression and various forms of violence, to a certain degree it remains a closely knit society in which individuality does not play a prominent role. Consequently, the proposed Palestinian housing policies consider the members of one household to be a single unit and do not recognise that women have special needs in the housing sphere. Housing planning does not address the economic vulnerability and social marginalisation of women. Access to the proposed low-income housing projects is to be based on the possibility of lending a sum estimated at US$ 30 000. This sum is a barrier for women, who generally have neither collateral to obtain such a loan in the first place, nor access to the economic resources necessary to guarantee its repayment. The majority of Palestinian women do not own land or other immovable property, and their participation in official, wage labour is limited. Thus, low-income housing is going to be particularly inaccessible to female heads of households in the West Bank and Gaza.

There is an obvious need for research on the legal situation of Palestinian women, with particular reference to issues of inheritance, housing, land and property. The lack of comprehensive studies in this field written by Palestinian women themselves is understandable given the political situation of the Palestinians, who have necessarily been focusing on their struggle for emancipation and statehood, rather than on background legal research, however important that may be.

2.6.5 Women's access to property through inheritance and other means

Historically, the main customary practice in Palestinian society that guarantees women some property has been mah\textsuperscript{r}, or bride price. Traditionally, inheritance seems not to have been the most common means for Palestinian women to acquire economic resources; rather, it should be regarded as merely one way for Palestinian women to obtain property.

In the Palestinian context, and according to the Shari'a as it is manifested in the Personal Status Law, mah\textsuperscript{r} is a woman’s own property. There are grounds for asserting that traditionally, in the Palestinian peasant context, the mah\textsuperscript{r} would usually be divided, one portion of it going to the bride’s father to cover the costs of the wedding and to compensate him for the costs incurred in raising her to womanhood and for the loss of her services to her natal family once she has left their home and entered the marital home. The remaining portion would be given to the bride in the form of jewellery or property that was recognised as being solely hers, as was any income she could generate with it.

\footnotesize{Filfil (n. 297 above).}
\footnotesize{Ibid.}
\footnotesize{Two studies have examined Palestinian women's inheritance from an anthropological perspective. The first was conducted in 1923 by Hilma Granqvist in the village of Irtas, Bethlehem, southern West Bank; the second in 1995 by Annelies Moors, in the areas of Nablus, northern West Bank. Although these studies contributed towards a reasonably comprehensive understanding of the subject, more research is needed in this area. In 1995, the Norwegian organisation Fafo published a comprehensive report on Palestinian living conditions (Heiberg and Ovensen, see n. 283 above) which includes a chapter (Ch. 10) on women, authored by Rima Hammami (see n. 303 below).}
\footnotesize{Rima Hammami, Ch. 10 in Heiberg and Ovensen (n. 283 above). Although the word 'dowry' is often used – inaccurately – as a synonym for the Arabic mah\textsuperscript{r}, there is an important distinction: dowry is mainly practiced in India and is paid by the bride's family to the groom's family (usually to the groom's father), whereas mah\textsuperscript{r} is paid by the groom's family to the bride's family (usually to the bride's father) to compensate them (him) for the costs they (he) have (has) incurred on her behalf. Therefore, a better translation of mah\textsuperscript{r} is 'bride price'.}
\footnotesize{Ibid., p. 295.}
\footnotesize{Moors (n. 278 above).}
\footnotesize{Ibid.}
With the rise of wage labour, the associated increased economic dependence of women solely on the husband, and the breakdown of the extended family as a productive unit, it seems that women have begun to use their *mahr* more for the economic well-being of the nuclear family. Thus, women often invest their *mahr* in the building of the family home, in productive property (such as agricultural land, livestock or vehicles) for the husband, or in their children’s education.

Prior to the predominance of wage labour, many peasant women received their *mahr* in the form of land or fruit trees, or exchanged their monetary *mahr* for productive property (such as livestock). The historical problem that Palestinian women were denied the right to inherit land seems to be primarily linked to the issue of land fragmentation. In the past, no rule of primogeniture existed in Palestinian society; therefore, over generations, inheritance sharing among a number of sons led to land being broken down into ever smaller, ever less economically viable units. In this context, a woman’s right to inherit land was viewed not only as a luxury, but even more importantly as a serious threat to her brothers’ ability to inherit enough land to form an economic base for a whole family. On this issue, the general social compromise that was made consisted in peasant women waiving their rightful share of land inheritance in exchange for the guarantee of economic and social support from their brothers.

2.6.5.1 Women choosing to refuse to trade off their inheritance rights

Various words or phrases have been used to refer to Palestinian women waiving their inheritance rights: some say they ‘exchange their rights’, others that they ‘trade them off’ and still others that they ‘renounce’ them. Each of these concepts has very specific connotations and it is often difficult to ascertain the true position and motivation of Palestinian women who waive their inheritance.

Nonetheless, it is clear that the waiving of inheritance rights is central to a woman’s relationship with her brother(s). This is particularly evident in the negative sense; that is, given the consequences suffered by women who fly in the face of custom and demand their share, which usually leads to a total loss of emotional and financial support from all the male relatives, as well as from those female relatives who see the woman’s actions as disgraceful to the family. Conversely, a woman’s act of ceding her share to her brother(s) automatically reaffirms and strengthens her ties to her family and the broader community.

The following table, based on the results of a 1999 survey of 398 women by the Palestinian Central Bureau of Statistics’ Gender Unit shows the percentages of women in various regions and areas who obtained either their full share of inheritance, a partial share, or no share at all.

<table>
<thead>
<tr>
<th>Region/area</th>
<th>No. of women</th>
<th>Obtained full inheritance share</th>
<th>Obtained partial inheritance share</th>
<th>Obtained no inheritance share</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Palestinian territories</td>
<td>398</td>
<td>20 %</td>
<td>13 %</td>
<td>67 %</td>
</tr>
<tr>
<td>West Bank</td>
<td>315</td>
<td>15 %</td>
<td>11 %</td>
<td>74 %</td>
</tr>
<tr>
<td>Gaza Strip</td>
<td>83</td>
<td>37 %</td>
<td>15 %</td>
<td>48 %</td>
</tr>
<tr>
<td>Urban areas</td>
<td>227</td>
<td>26 %</td>
<td>13 %</td>
<td>61 %</td>
</tr>
<tr>
<td>Rural areas</td>
<td>131</td>
<td>9 %</td>
<td>9 %</td>
<td>82 %</td>
</tr>
<tr>
<td>Refugee camps</td>
<td>40</td>
<td>23 %</td>
<td>20 %</td>
<td>57 %</td>
</tr>
</tbody>
</table>

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307 Ibid.
308 Ibid.
309 Hammami (n. 303 above).
310 Ibid.
312 Hammami (n. 303 above).
313 Moors (n. 278 above), p. 55.
314 Ibid., p. 54.
Another survey conducted by the Palestinian Central Bureau of Statistics indicates that 52 percent of men and 8 percent of women aged at least 18 years own a house, real estate or a share of a house or real estate, while 13 percent of men and 0.2 percent of women own, jointly own, or have invested in, a business. These numbers clearly show the gender gap in ownership of economic resources in Palestinian society.

In 1993, the Norwegian organisation Fafo conducted a comprehensive survey and study of Palestinian living conditions, including a section on women that presents information useful for the purposes of this report. One of the issues addressed by the survey was women's ownership of, and relation to, property. The surveyed Palestinian women were asked what type of property they possessed and whether they had control over it; that is, whether they were free to use or dispose of it as they wished.

About 40 percent of the women respondents claimed that if they faced economic hardship they would have nothing to sell or mortgage, while 24 percent had two or more forms of property to sell. Only 8 percent of the women in the entire sample claimed that they owned land which was theirs to own and sell.

<table>
<thead>
<tr>
<th>Types of Property</th>
<th>Percentage of Women Who Owned Such Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jewellery</td>
<td>48%</td>
</tr>
<tr>
<td>Land</td>
<td>8%</td>
</tr>
<tr>
<td>House</td>
<td>9%</td>
</tr>
<tr>
<td>Trade tools</td>
<td>12%</td>
</tr>
<tr>
<td>Livestock</td>
<td>7%</td>
</tr>
<tr>
<td>Thobe (Palestinian embroidered dress)</td>
<td>15%</td>
</tr>
<tr>
<td>Bank savings</td>
<td>8%</td>
</tr>
<tr>
<td>Money (women’s saving group)</td>
<td>7%</td>
</tr>
<tr>
<td>Other</td>
<td>9%</td>
</tr>
</tbody>
</table>

2.6.5.2 Rural, urban and refugee women

It is very useful to differentiate between women who live in urban centres, those who live in rural areas and those who live in refugee camps. Particularly with respect to property ownership, such differentiation shows that the type of property owned by women (land, poultry, mortgage, jewellery, etc.) is determined by their living environment.

Palestinian women constitute 49.4 percent of the Palestinian population.135 Rural women constitute 14.6 percent of the total number of women, 48.2 percent of whom perform unpaid work.136 According to the Palestinian Bureau of Statistics, 50.3 percent of rural Palestinian women are involved in agriculture and do 65 percent of the State’s overall agricultural work. Furthermore, the Human Development Report 2002 of the Development Studies Program of Birzeit University showed that 9.2 percent of Palestinian rural families are supported solely by women. Overall, female-supported families constitute 28.5 percent of the Palestinian population.137

The difference between rural and refugee women is obvious: the latter have been deprived of their main resource for survival, which is land. Refugee women have significantly less resources and alternatives than other women. Palestinian refugee women have lost the productive role they once had in their village communities, working in the fields together with their fathers, brothers and husbands.

137 Human Development Report 2002, of the Development Studies Program at Birzeit University, as reported in Palestinian Rural Women Facts and Figures newsletter (n. 316 above).
Their role in the refugee camps is confined within the boundaries of their living space, which detrimentally affects their position and influence in society. Women and children suffer most from the lack of infrastructure and services such as sanitation, refuse disposal, water supply, electricity supply, and roads and paths. Also, the lack of communal space for social activities negatively affects women in particular.

Women are the primary users and managers of the physical environment. This role of women as household and health managers also exposes them to particular health risks. Overall, women are more likely to remain within the confines of the home and/or camp for cultural and economic reasons (in particular, the lack of economic opportunities for women outside the home). Both types of reason are reinforced by the effects of overcrowding, which make it even more difficult for women to carry out their multiple roles and responsibilities. In the Gaza Strip, 19 percent of the 139,910 refugee households are headed by a woman.

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Rural and urban women are not faring much better, as Maisoun Filfil found in a field study undertaken in a Ramallah neighbourhood:

When women use the house as a workplace, their psychological and physical health is negatively affected. Women who are responsible for the housework and do not enjoy the freedom of mobility find the home to be the most convenient workplace. Participants of the same study (who were most of them relatively poor) see a link among the housing environment, their poverty and their inability to move or improve their current housing conditions. Discrimination against women prohibits them from the same education opportunities and in turn economic opportunities as men. Women are also deprived of their inheritance rights, another financial resource.

Palestinian women living outside the refugee camps have equally limited access to economic resources; thus, they are financially disadvantaged, especially when they head a household. A study by Kuttab and Bargouti showed that, in 2002, less than 10 percent of women owned land or a house, while almost half of them possessed some saleable jewellery as their main asset. In 1997, female-headed households constituted 8 percent of all Palestinian households and 11 percent of the poor households. Of the female-headed households, 30 percent were classified as poor. Between 1996 and 1997, the economic gap between female- and male-headed households increased; the number of poor male-headed households declined slightly, while the number of poor female-headed ones increased by 4 percent. Female heads of household made up about 50 percent of the beneficiaries of the Ministry of Social Affairs in 1998. Of the female recipients of social assistance in the same year, 60 percent were widows, 15 percent were divorced, and 13 percent were separated. Female-headed households tend to be smaller than male-headed ones; the highest incidence of poverty is generally found among the largest households—of ten or more family members—particularly in the Gaza Strip.
2.6.6 Conclusions: key strategies, challenges and dilemmas in dealing with women’s inheritance issues

Despite the importance of women’s rights to inheritance and to housing, land and property, the Palestinian women’s movement and human rights organisations have paid little attention to these particular rights and related issues. Palestinian society, having been under military occupation and oppression for nearly sixty years, in addition to having lived under what was supposed to have been a transitional period for more than ten years now, has had no alternative but to relegate such key issues to low priority.

Since the very first day of occupation in 1947, the Israeli forces and their draconian and illegal measures — including mass forced eviction, mass forced displacement, dispossession of property and land on a huge scale, and the bombing and demolition of many thousands of homes — have created a distinct and unique case for women’s rights to inheritance and to housing, land and property to be protected, upheld and realised. Unfortunately, the occupation has also affected the perception of women’s rights, especially in the broader society, which may well ask itself why Palestinians should focus on these specific women’s rights when the whole population is being targeted and affected? This is the particularly challenging context of Palestinian women’s rights today — and the situation seems unlikely to improve in the foreseeable future.

The Palestinian people, society and organisations are trying to search for ways to end the Israeli military occupation, while working on the internal development and well-being of their fractured and traumatised society. Historically, priority was given to the national struggle, the main objective of which is to end the occupation. Beginning in 1995, with the foundation of the Palestinian Authority, all efforts were focused on building a Palestinian State within the borders of the lands occupied by the Israeli military forces since 1967. Between 1995 and 1999, many initiatives were taken to positively affect the progress of the Palestinian community in what was seen as a transitional period. There were sincere hopes that this would lead to a far better situation.

In 1994, the Jerusalem Media and Communications Centre (JMCC) held a conference entitled ‘Challenges of the Transitional Period after Oslo.’ At the conference, Bassam Jarrar, a well-known Islamist figure, declared that there are several bridges linking the (future) Palestinian Authority with the Islamist Movement. One of those bridges is the Personal Status Law. He considered that the laws that organise family matters are the sole responsibility of Islamic institutions.

Within the context of preparing for a sovereign Palestinian State, and recognising the importance of effecting positive changes for women in the transitional period, the Palestinian women’s movement pushed for legal reforms in various ways. One major effort for legal reform was the Palestinian Model Parliament Project (PMPP), directed by the Jerusalem-based Women’s Centre for Legal Aid and Counselling (WCLAC, which authored this country report). Recognising that freedom is not only in and about a piece of land or territory, but is also in the minds, spirits and rights of its individuals, the Model Parliament launched a society-based campaign for women’s legal rights.

The PMPP focused on societal participation by forming community-based committees in the West Bank and Gaza Strip. A large number of workshops were held to discuss proposed amendments to some of the existing Palestinian laws, with particular focus on the Personal Status Law. Of the 35 amendments proposed by the PMPP, one addressed inheritance. The aims of the project were to gain societal approval for these amendments and to raise awareness of the need to improve women’s legal rights, especially as defined in the Personal Status Law.

Since 1999, the Israeli military forces appear to have been deliberately destroying all constructive efforts undertaken by the Palestinian Authority. They have been bombarding and invading cities, refugee camps and villages that are under PA control and jurisdiction.
During the community campaign for women's legal rights, the proposed amendments were discussed thoroughly. However, some participants were in favour of leaving the inheritance laws unchanged. Even though the amendments took account of the local Palestinian context and prevailing social attitudes, participants stressed that they did not wish to reform the inheritance laws but preferred to give priority to other types of reform. Notwithstanding the WCLAC's inherent belief (which is shared by COHRE) that inheritance rights are an indispensable element of women's rights as a whole, it was decided that it would be unethical to work contrary to the participants' explicit wishes.

The amendment proposed by the PMPP was to provide for legislation that would prohibit all transfers of lawfully inherited shares to other parties for the first two years after the division of an estate. This would mean that a woman could not legally waive her inheritance share until two years after the death of the benefactor. The intention was to curb the current practice of women 'exchanging' or 'trading off' their inheritance shares, whether willingly or under coercion.

Even this proposed amendment raises several key questions for the women's movement. If the aim is to secure what is legally recognised for a woman (under the Shari'a) – that is, half the amount of her brother’s share – is this not tantamount to abandoning the very principle of equality? To demand full equality in inheritance would be to ignore the wishes of the workshop participants; does this mean that legal equality within the Palestinian context differs from the WCLAC's (and COHRE's) understanding of equality? And, what is it that Palestinian women really want? To confront and resolve these questions is vital to any serious attempt to work on and challenge the present situation of women's inheritance rights. These questions have important implications at both theoretical and practical levels.

Another key challenge is that the Personal Status Law is considered to be fully 'owned' by the religious institutions within Palestinian society; surely, they would not allow the women's movement to reform, or even propose changes to, family law. Even among the workshop participants, who were not specifically representing any religious institution, the prevailing perception was that inheritance law, more so than other segments of the Personal Status Law, is integral to the holy Qur'an. Thus, the mere discussion of possible inheritance law reforms is regarded as sacrilegious. The economic interests that are intertwined with women's inheritance rights present an additional challenge, as empowering women with 'productive inheritance' can give them the potential to compete with their male kin in the economic sphere.

2.6.7 Recommendations

1. More feminist legal research needs to be conducted in the Palestinian context. Part of this should extensively focus on inheritance rights and, in particular, on learning about women's perspectives on such rights and related issues.

2. Legislators and other formal authorities should enforce the rule that women receive at least what is afforded them under the Shari'a-based Personal Status Law.

3. Governing institutions should enact civil laws that protect women's rights to inheritance and to housing, land and property and are separate from the Personal Status Law. This should prevent these rights from being ‘hijacked’ by religious bodies.

4. As a key part of its mission, the Palestinian Authority (along with other political, social and cultural Palestinian organisations) needs to fundamentally change social and cultural attitudes towards women's inheritance, housing, land and property rights, in accordance with Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

327 This is confirmed by experience of the WCLAC in its work on the Palestinian Model Parliament Project.
2.7 TUNISIA

2.7.1 Historical development of the Tunisian system of inheritance

Historically, two types of privilege have been fundamental to the system of inheritance practised in Tunisia: gender-based (male) privilege and religious (Muslim) privilege. The Islamisation and Arabisation of Tunisia, originally Berber territory like most other countries of the Maghreb, began in the 7th century AD and was the most significant turning point in the country's cultural development. The Maliki school (see Glossary), one of four schools of religious law within the Sunni Islamic tradition, became especially popular.

In the centuries thereafter, the vast influence of the Maliki school became apparent: politically, it helped shape the dynastic evolution of the nation; ideologically, it indoctrinated civil society; and legally, its codes were accepted as the national code of law. This commingling of State, society and law with religious principles guaranteed a power stronghold for the Maliki adherents, though not without conflict.

According to historians of Islam-inspired law, the Shari'a, the transformation of the Maliki discipline into a code of law took place throughout the Maghreb region. The law codified Muslim patriarchal family structures, adopting and expanding on prescriptions of the Qur'an.

Until 1956, when Tunisia achieved full independence from France (it became a republic in 1957), the inheritance rights of Tunisians had been governed by the rules that were applicable within the various religious communities to which they belonged. Thus, Muslim Tunisians were subject to Islamic laws of inheritance, Jewish Tunisians to rabbinical rules, and Christian Tunisians to Christian doctrine.

On 13 August 1956, the Government of Tunisia enacted a unified Personal Status Code (Code du Statut Personnel) to apply to all Tunisian citizens, regardless of their religion. Although the Personal Status Code contained some of the most progressive provisions on women's rights of any Islamic country at that time, it failed to provide for equal inheritance rights. Despite some notable judicial developments in recent years, to this day the system remains fundamentally discriminatory against women.

2.7.2 Law and society

2.7.2.1 Women in society

Although legal gains have recently been made for women, their lifestyles and decisions continue to be influenced by traditional norms, which weigh heavily against the more progressive legal regime and its contemporary amendments. The traditional patriarchal model remains strong in Tunisian law, as in the official classification of men as heads of household, the exclusive recognition of patriarchal lineage, and inheritance laws that disfavour women.

Along with high illiteracy rates and continuing exclusion from the workplace – both particularly prevalent among women in rural areas – violence against women is a key issue in the fight for women’s rights. In the absence of official statistics, organisations such as the Tunisian Association of Democratic Women (Association Tunisiennne des Femmes Démocrates, ATFD) report that violence against women, especially in a marital context, remains a major problem.

In Tunisia, the susceptibility of women to domestic violence is compounded by discriminatory national legislation obstructing women’s ability to secure property rights, receive credit, or inherit on equal terms with men.

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328 This country report (Subsection 2.7) was prepared by Sana Ben Achour of the Centre for Arab Women’s Training and Research (CAWTAR), Tunis, Tunisia. (The original version was in French.)

329 An ethnic group descended from various pre-Arab tribes indigenous to northwest Africa.

330 Arabic for ‘west’; the region including Morocco, Algeria, Tunisia and Libya.

331 One of the two main Islamic sects or denominations: Sunni and Shi’a.
2.7.2.2 Legal reforms and cultural debates

“President [Habib] Bourguiba [first President of the Republic, from 1957 to 1987] brought about these changes. He made protection of women the number-one priority. With the help of civil society, the reaction was not violent and society accepted the changes.”

The new Personal Status Code, with its progressive articles on mutual consent for marriage, the abolition of polygamy, and the institution of legal divorce, represented a revolution in Tunisian family law. Inheritance continued to be governed by the Shari’a, although several subsequent amendments to the Code did deal with specific inheritance issues.

Beginning in 1958, important amendments were made to the Personal Status Code regarding the rights of adopted children. In 1959, the Government added Book XI ‘On Testaments and Testamentary Clauses’ to the Code, thereby incorporating in law three fundamental provisions that were designed to achieve greater social justice: (1) obligatory legacy in favour of children whose father has died but whose grandfather is still alive; (2) fardh, the allocation of pre-defined fractions of the deceased estate to specific relatives (which particularly benefits women), and (3) al-hajb, the right of exclusion, in favour of the only daughter.

In 1993, the Personal Status Code underwent several substantive amendments:

- Abolition of the wife’s duty to submit to the husband, substituting the duty of mutual respect;
- Co-responsibility in managing the affairs of the marriage parties and their family;
- Reinforcement of the mother’s prerogatives in the area of decision-making and guardianship;
- Granting of guardianship to the mother in the event of default by the father;
- Granting of majority to the under-age wife (17 to 20 years) regarding civil and commercial acts.

However, this new drive for reform soon reached its limits. Confronted with a societal return to ‘the authentic spirit of Islam’, reformist legislators could not break free from the dual cultural anchorages of religion and patriarchy; they gave in to seemingly unchangeable norms and maintained the unequal inheritance regime. Public debate raged between ‘Fundamentalist Muslims’ and ‘Modernist Muslims’, revolving around legislative interpretation of the Shari’a, including the rules governing inheritance. Yet the Government took no firm stance on the meaning of Article 1 of the Tunisian Constitution, which declares that Islam is the State religion.

2.7.2.3 Realities: divorce, property and inheritance

Divorced women are often evicted, or threatened with eviction, from their marital residence, regardless of their contribution (financial and otherwise) to the acquisition, maintenance and/or development of the property. One of the reasons why this so frequently occurs is that conjugal property is automatically registered in the husband’s name.

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333 Al-hajb gives testators the option of excluding certain relatives from all or parts of the inheritance.
Although accurate statistics are not available, it can be stated with certainty that in the vast majority of cases, upon the death of the male owner, the family’s land and housing automatically passes to eligible male heirs — without the consent of eligible female heirs being sought. Thus, as always, an overwhelmingly large proportion of privately owned land remains in the possession of men, because the inheritance system continues to be based on patriarchal principles.

“Everything appears to be OK in Tunisia; but in reality there are still many people who control their daughters and do not let them inherit.”\(^{336}\)

A tradition that is strong, even to this day, is to give women their inheritance share in money and/or agricultural produce, and to bequeath the land itself to the male family members. When a family estate comprises a large accumulation of goods and services in addition to agricultural and/or commercial lands, the females are given the goods and the service establishments while the males get the land. In some parts of Tunisia, this traditional division of inheritance has attained the status of informal, or customary, law. It is also quite common for wealthy Tunisian business-owners to disinherit their female family members completely.

Particularly in rural areas of Tunisia, the majority of women (and men) are unaware of their statutory rights.

**OFFICIAL STATISTICS ON HOUSING**

Statistics from the Tunisian Housing Ministry indicate that the housing stock is in surplus. However, this does not mean that women’s housing rights are not violated; in fact, most of the housing is registered in men’s names, which makes women vulnerable to eviction or homelessness.

“In the area of housing, he [the Housing Minister] continued, the latest statistics showed that the amount of available housing exceeded the number of families by 13 percent. Also, the percentage of families owning their own homes had reached 78.2 percent. In addition, there was a decrease in slums of 1.2 percent. President Zine El Abidine Ben Ali had initiated a programme for the total eradication of slums and ‘lousy housing’ by 2004. Further, the country had not encountered the same difficulties that other countries had with regard to big cities. The capital, Tunis, for example, had a population not exceeding 2 million.”\(^{337}\)

### 2.7.3 Judicial background

#### 2.7.3.1 Paradoxical political and legal systems

Tunisia’s political and legal systems, like those of other Maghreb countries, embody various paradoxes. First and foremost is the ‘normative duality’ that is evident in the fact that the Government embraces secular values whereas the law is largely based on Islamic principles. Although secularism is becoming increasingly pervasive in society, *Shari‘a* rules still govern many aspects of citizens’ day-to-day lives. Actually, the formal legal system is threefold, comprising statutory law, Islam-inspired law and customary law. The problems presented by these competing principles are compounded by the fact that some laws and political institutions are not yet definitive and therefore are not as effective as they should be.

A second paradox is manifest in the organisation of State power and the political institutions: although the Government is ostensibly based on transparent democratic structures, in reality there is significant corruption and nepotism, both in the administration and in political representation.

\(^{336}\) COHRE interview with Espace Tannasof, a women’s rights NGO based in Tunis, Tunisia, Sept. 2004.

\(^{337}\) UN press briefing by Mr Slaheddine Belaid, Tunisian Housing Minister, 8 May 2001,
In this paradoxical legal and political context, there has been considerable pressure for change from popular social movements that strive for greater democratisation, rights of the individual, and independence, rights and equality for women. However, the Government has yet to fully integrate such principles into the formal political and legal systems. These social movements have at least imbued Tunisia with a new sense of ‘legal conscience’, as confirmed by civil society demands for human rights, the rule of law, and responsible citizenship.

2.7.3.1 The Constitution and Islam
The Constitution of Tunisia, which was adopted in 1959, granted women voting rights for the first time in the country’s history. Very much a product of the early post-colonial era, the Constitution instated a new legal order founded on the principle of constitutional supremacy. However, Article 1 of the Constitution asserts that Islam is the State religion.338 From the outset, this assertion, which is vague and therefore open to interpretation, has been the subject of much debate: is it merely a declaration of intent without any real normative impact on law-making, or does it imply that Islamic principles should form the basis of all law in Tunisia? The vagueness of Article 1 led to conflict between proponents of the Constitution and adherents of Islam, between State and religion, which continues to this day and is evident in court jurisprudence. To a large extent, the same conflict underlies many of Tunisia’s reservations to various international conventions (see Subsection 2.7.6, below).

2.7.3.2 Political discourse
The State of Tunisia has not been indifferent towards the discourse on individual rights, which is invoked at the national level by women’s associations, human rights organisations, trade unions and political parties. After the 1987 impeachment of President Habib Bourguiba, who had led the country since independence, judicial and civil debate began to rage about the influence of Islam in government and society. Bourguiba was (in)famous for reducing the influence of religion on society and greatly improving women’s rights in certain respects, but with the decline of his authority, petitions for greater influence of Islam in government – referring particularly to women’s rights – began to flood Parliament.

The Government responded to this pressure by reminding all political parties of their constitutional obligation to “respect the sovereignty of the people, the values of the Republic, human rights, and the principles pertaining to personal status”.339 This move was designed to safeguard the Personal Status Code from further attack.

2.7.3.3 The judicial courts: torn between tradition and innovation
A study of recent jurisprudence reveals that although decisions made in the realm of personal status and family relations tend to fluctuate between tradition and innovation, the privilege accorded to Islam and the traditional family model remains. For example, there have been decisions upholding the requirement that the child takes on the father’s religion, and imposing an obligation to raise the child in accordance with the family’s Arab–Muslim identity. One of the most significant issues dealt with in jurisprudence is that the Shari’ah and fiqh340 are considered as official sources of Tunisian law. This is evident in recent court decisions on interpretations of statutory law as it relates to inheritance and the recognition of marriage between Tunisian Muslim women and non-Muslim men.

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338 See n. 335 above.
339 Art. 8 of the Constitution. (See n. 335 above.)
340 Islamic jurisprudence, of which there are four schools in the Sunni tradition, including Maliki and Hanafi.
Nevertheless, court jurisprudence does seem to be leaning towards principles of equality and non-discrimination. One of the most successful ways in which judges have addressed discrimination in the area of inheritance is by upholding principles of freedom of conscience and religious faith.

2.7.3.1.4 A legal precedent
A breakthrough judgment came from the Tunis Court of First Instance on 18 May 2000 (TPI, no. 7602/2000). The judge in this case referred to the fact that non-discrimination on grounds of religion is one of the founding principles of the Tunisian State, as safeguarded by the Constitution, Article 5 (Personal Integrity, Conscience, Belief). Further support is found in Articles 2, 16 and 18 of the Universal Declaration of Human Rights, as well as in Article 2, Paragraphs 1 and 2 of both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, both of which Tunisia ratified without reservation. Finally, the judge also determined that any broad interpretation of the Personal Status Code was unconstitutional; for example, an interpretation that makes religious affiliation, alongside murder, cause for disentitlement from inheritance. For the court, this interpretation is contrary “to Article 6 of the Constitution since it effectively creates two categories of Tunisians: those who have the right to inherit for they are of the same confession as the author [of the Constitution] and those who are prevented for the sole reason that they exercised one of their fundamental liberties.”

This is the first time that a Tunisian court has upheld a completely secularised conception of family and related law. Breaking with the normative duality of law in Tunisia (see Subsection 2.7.3.1, above), the judge in this case gave family law a new constitutional basis.

The Tunis Court of Appeal confirmed this lower-court decision in 2002, supporting the strict limitations on interpretations of Article 88 of the Personal Status Code regarding reasons for exclusion from inheritance. The Court asserted the unlawfulness of giving a meaning to a text other than its literal expression. According to the Court, no interpretation of law may induce inequality that is not supported either implicitly or explicitly in the Personal Status Code itself. Above all, the Court emphasised that protection of the free exercise of belief pursuant to Article 5 of the Constitution prohibits the linkage of inheritance rights to religious factors.

These two decisions respecting the Constitution were subsequently confirmed by the highest court in Tunisia, the Court of Cassation.

2.7.3.2 Inheritance law
Despite some positive developments in recent years, the Tunisian laws governing inheritance still enshrine male domination and traditional models derived from the Shari’a. In fact, the Personal Status Code essentially renewed the Muslim inheritance tradition by confirming the following notions:

- Patrilinearity;
- Male privilege;
- The dominance of blood relations over conjugal relations.

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343 Ibid.
344 The Court of Cassation serves as the final court of appeal for all lower court cases in the regular court system. It is composed of one criminal and three civil divisions.
As mentioned in Subsection 2.7.2.2, above, limited reforms of select aspects of the inheritance law regime have improved the situation for women. The first reforms began in 1959 and sanctioned the following practices:

- **Obligatory legacy (al-wassiya al-wajiba),** whereby a child whose father dies before his or her grandfather does is assigned the father’s inheritance rights, provided that the share thus gained does not exceed one third of the total assets.

- **Fardh,** which refers to the fixed fractions of the inheritance that specific heirs receive, as defined in the Shari’a. This system serves to determine and protect the share of the deceased estate that a woman or girl may be entitled to receive in the absence of any or sufficient eligible male relatives.

- **The right of exclusion (al-hajb),** whereby paternal daughters and granddaughters benefit from the whole inheritance even in the presence of eligible heirs, brothers of the deceased, paternal uncles and their descendants. This mechanism gives direct inheritance rights firstly to the spouse, secondly to the daughters and thirdly to the granddaughters.

Despite these positive developments, Tunisian inheritance law remains flawed by a number of problems and discrepancies. These include: (1) the discrepancy between the traditional, patriarchal, Muslim model of the family and the actual structure of the conjugal family; (2) the anachronism that the traditional rules of property transfer have become in the face of new economic realities; and (3) the discrepancy between, on the one hand, the reality of male and religious privilege, and, on the other hand, ideal values of equality that have become the ‘minimum standard’ for every State.

### 2.7.3.2.1 Personal Status Law

- The Personal Status Law is based primarily on Islamic jurisprudence. It governs personal status issues for all Tunisians, regardless of religion.

- Although family and inheritance law is codified based on the Napoleonic code, civil law judges sometimes apply Shari’a law in family cases (especially those involving child custody) if the two systems conflicted [sic].

- Women enjoy substantial rights in Tunisia. The government enacted legislation in 1998 to improve women’s rights in matters of divorce and property ownership. However, inheritance law still discriminates against women.

- Unlike in most Arab countries, rights to citizenship are conveyed through either the mother or the father.\(^{345}\)

Even though plenary adoption\(^ {346}\) was recognised in 1958, legitimising the adopted child (see Subsection 2.7.3.2.2 below), the inheritance regime still prevents a child born of an extra-marital relationship from inheriting. This remains the case even though a 1998 law provides for investigation of paternity, including by means of genetic analysis.

A further, serious shortcoming of the inheritance system is that it continues to be founded on a blatantly discriminative principle whereby male heirs are granted a share that is twice as much as that of female heirs.

Finally, the law is still based on ancient religious texts that are ambiguous and therefore open to interpretation, which perpetuates broad interpretations and even misinterpretations.


\(^{346}\) Adoption plénière, a French term meaning adoption that terminates the existing legal relationship between the natal parent and the child.
2.7.3.2 Inheritance and adoption
Adoption was common in pre-Islamic Arabia; however, it was outlawed by Islam. Ever since, adoption as a voluntary relationship has been prohibited and is not practised in most Muslim countries. Some countries have replaced adoption with a similar practice called kafala. Although this practice allows adults to take an orphaned or abandoned minor into legal custody for protection, he or she is not entitled to use the family name and has no inheritance rights. In 1958, Tunisian legislators broke with these traditional models and legalised public guardianship, official guardianship and adoption. The law assigns the adopted child the same rights and obligations as the natural child; among others, the rights to take the adopter's family name and to be eligible to inherit from the adoptive parents.

The legalisation of adoption is one of the most important innovations in Tunisian law. Although there have been some attempts by courts to reduce the rights of adopted children (for example, by considering the contractual and potentially reversible character of adoption) these have not been successful.

2.7.3.2.3 Inheritance and non-Muslims
Whereas under traditional law a difference of religious faith was a cause for exclusion from inheritance, Tunisia's new Personal Status Code defines only murder as a cause for disinheritance (not only is the guilty party excluded from inheriting, but also any accomplices and false witnesses). However, this seemingly clear text has certain ambiguities, and has been interpreted as admitting the Shari'a rule on difference of religion as a cause for exclusion from inheritance.

This traditional rule discriminates against both female and male non-Muslims in that it prevents them from inheriting from Muslim family members. Because of this continuing bias against non-Muslims in spite of the official legislation, many families of mixed faiths make 'protective' provisions in the form of a testament and/or sale of property in favour of the surviving spouse. Even if the non-Muslim spouse or other family member has been in the family for decades, has converted to Islam and has changed his or her name accordingly, he or she always remains an outsider to the Muslim family and is not permitted to inherit under the Shari'a. It should be noted, however, that these issues mostly arise in cases where a non-Muslim woman has married into a Muslim man's family. For a Muslim woman who has married into a non-Muslim man's family, the situation can be even worse as she has gone against the Islamic tradition of marrying within the faith; furthermore, their marriage is often a source of scandal in the family and community.

2.7.3.2.4 The inheritance system and the inequality of shares
Even though Tunisian family law underwent major reforms in the period from 1956 to 1958, the inheritance legislation reinforced male privilege and reformulated the traditional Shari'a-derived rule that male heirs with the same degree of relationship to the deceased as female heirs are entitled to twice the latter's shares. This rule usually works to the disadvantage of the wife, the mother, the daughter and all other female relatives. The only exception is that if the parents are the only surviving relatives after the death of their child, the mother inherits equally with the father.

In cases where a surviving spouse is the sole heir, the widower is entitled to half of his wife's estate, whereas the widow is entitled to only a quarter of her husband's estate. In cases where the couple has descendants, the widower is entitled to a quarter of his wife's estate, whereas the widow is entitled to only an eighth of her husband's estate. This discrimination in inheritance shares extends to other categories of relatives. For example, only the sons and daughters of the married couple's son are entitled to inherit. The sons and daughters of the married couple's daughter are excluded.

The matter of equality of shares between male and female heirs has never reached the courts. The traditional system of inheritance according to pre-defined shares has been fully internalised in many Tunisian communities, and is especially prevalent in rural areas.

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Attitudes are changing in favour of equality. Many people circumvent the traditional inheritance formulae by using testament, donation, etc., and by transferring property from parents while they are still alive. Nowadays, many Tunisians take the precaution of dividing their wealth while still alive, in order to protect female family members. Because many do not adhere to the Shari'a in other ways, they also feel that they do not need to do so with regard to inheritance. Many people try to apply a liberal interpretation of the Shari'a, or an interpretation of their own based on secular views.

2.7.4 Marital property regimes

In 1998, the Government of Tunisia reformed the traditional marital property regime, adopting a law that allows marriage parties to have joint or shared estates. The traditional regime, which was founded on the separation of spouses' assets, could be detrimental to women in cases of divorce.

However, the 1998 law did not completely abolish separation of assets. The parties now have the option of joining their properties upon or after marrying. The law only applies to estates consisting of multiple buildings for family use, acquired at the time of marriage. It does not affect the traditional regime of complete separation of the estate.

Legislators acknowledged that the traditional regime was penalising women. There was increasing recognition of women's active contribution – directly and indirectly – to the acquisition of the family home. Nevertheless, in most cases, properties acquired by couples are still registered in the husband's name, and therefore women do not benefit from them after divorcing. This new law sought to change that.

In reality, however, it is difficult to assess the effectiveness of this law. According to several reports, it has limited or even no practical application because it is so difficult to implement (the rules of administration and management of property are complicated) and because traditional notions of property are so deeply ingrained.

2.7.5 The emergence of innovative practices in the spirit of equality

Several practices have begun to emerge among married couples in urban areas who wish to circumvent the discriminatory Shari'a rules. They manage to stay within the bounds defined by the Personal Status Code and yet provide for equitable inheritance by females in their family.

2.7.5.1 Testament

The act of testament, or will writing, is defined in Article 171 of the Personal Status Code. Article 176 states that a will “must be drawn by an authentic act or by a written act dated and signed by the testator”. One may not bequeath more than one third of one's estate, and a bequest to a person already considered a statutory heir is not allowed. However, if all the beneficiaries consent to the terms of the will, it may provide for bequests to such an heir and it may will away over one third of the estate. A will is valid “even if the testator and the legatee are not of the same religious confession.”

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349 Personal Status Code of Tunisia, 1958, Art. 179.
350 Ibid., Art. 174.
2.7.5.2 Donation

The Personal Status Code defines donation as a “contract by which a person transfers to another person the ownership of certain assets free of charge.” Donation as a means of property transfer is used to benefit those who are disadvantaged under the traditional inheritance laws, such as a non-Muslim wife or husband, children from a first marriage that has since been dissolved, nieces and daughters. Through the act of donation, parents, while still alive, may transfer their property to their male and female children. This allows for equitable division among the children and protects them not only from having to deal with the types of conflicts that often arise when, at the time of death, eligible heirs lay claim to the property, but also from the risk of being evicted.

2.7.6 International conventions

Tunisia initially signed and ratified international treaties including the International Covenant on Social, Economic and Cultural Rights (ICESCR) without reservation, though it did later declare some reservations. The Government attached several reservations to its 1985 ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), stating explicitly that it would not accept any decision in conflict with Article 1 of the Constitution of Tunisia, thereby implying that it would not deviate from the tenets of Islam.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

“Reservation of the Tunisian Government concerning Article 16, paragraphs (c), (d), (f), (g) and (h):

“The Tunisian Government considers itself not bound by Article 16, paragraphs (c), (d) and (f) of the Convention and declares that paragraphs (g) and (h) of that article must not conflict with the provisions of the Personal Status Code concerning the granting of family names to children and the acquisition of property through inheritance.

“In accordance with the provisions of the Vienna Convention on the Law of Treaties, dated 23 May 1969, the Tunisian Government emphasizes that the requirements of Article 15, paragraph 4, of the Convention on the Elimination of All forms of Discrimination against Women, and particularly that part relating to the right of women to choose their residence and domicile, must not be interpreted in a manner which conflicts with the provisions of the Personal Status Code on this subject, as set forth in chapters 23 and 61 of the Code.”

Tunisia also declared specific reservations to provisions on the right to choose one’s profession or occupation, and on the nationality of children. In regard to the right of women to choose their residence and domicile, and the acquisition of property through inheritance, the reservations emphasise that provisions of international law “must not conflict with the provisions of the Personal Status Code.”

2.7.7 The way forward for Tunisia

The Tunisian Association of Democratic Women (ATFD, founded in 1989) and the Tunisian Association of University Women for Research in Development (AFTUR, founded in 1989) both play a key role in the women’s movement in Tunisia and have been instrumental in bringing issues of women’s inheritance into the focus of public debate.
Recognising women’s inferior position through analysis of the patriarchal system, the hierarchal divisions between men and women, and the official denial of violence against women, these two independent organisations challenge official discourse on women’s rights and seek to highlight the difficulties that women face in reality.

These two organisations have analysed the country’s laws to reveal inherent and deeply entrenched patriarchal systems. The focus of their work and advocacy is to combat these systems and pursue equal rights and non-discrimination for women. They have therefore demanded that Tunisia withdraw its reservations to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. Furthermore, they have emphasised the deficiencies of the Personal Status Code and the 1993 reforms, denounced male privilege in the transfer of the marital home upon divorce, called for reform of the rules governing ownership of estates by marriage parties, and begun a national campaign for equality in inheritance.

2.7.7.1 National awareness campaign for equality in inheritance

Launched by the ATFD in October 1999, this campaign has included the circulation of petitions calling for public debate on the issue of gender-based inequalities in inheritance and demanding reform of the inheritance laws so as to better protect women’s rights. The aim is to raise public awareness of women’s inheritance issues by disseminating information directly and through the media. In the process, public reaction to the issues will be gauged in order to better define and direct the campaign activities and strategies. So far, the campaign has met with some resistance, but has also found acceptance, thus reflecting the advances that have recently been made in Tunisian society with regard to women’s rights.

The resistance has mainly been in the form of a general public unwillingness to question the system of inheritance as defined by the Shari’a, seeing this as a challenge to Islam itself. In addition, inheritance is largely seen as a family matter that belongs to the private, not the public sphere. Many Tunisians wish to safeguard the traditional system of patrimony; that is, inheritance from the father. Men especially do not want to challenge the notion that they are heads of families and as such are ‘entitled’ to a greater share of inheritance. Furthermore, many regard inheritance issues as being considerably less important than civil rights issues such as freedoms and liberties.

The awareness-raising campaign entered the debating stage in the period 2002 to 2003, with the ATFD and the Tunisian League for Human Rights joining forces to present workshops around the country. These enabled organisations to engage actively with the reform process, critically analysing existing inheritance laws and practices in the light of the social and familial developments that Tunisia has witnessed since achieving independence, and formulating desired changes.

This campaign of the ATFD and other organisations has culminated in a publication analysing inheritance since ancient times, with reference to law, doctrine and practice. The campaign continues, with research on how the courts deal with inheritance and how it is actually practised in the Tunisian family.

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555 This subsection is partly based on a COHRE interview with the ATFD, Sept. 2004.
2.8 TURKEY

2.8.1 Historical background

Turkey is unique in the Muslim world because of its secular and progressive reforms of aspects of the Family Code that affect women’s lives. The founding of the Turkish Republic in 1923 brought an end to the Ottoman Empire’s system of parallel laws and established a single, secular and standardised legal system adapted from the European system of law. For the reformists, the introduction in 1926 of the Turkish Civil Code was a major victory against the conservative forces that defended the Islamic Family Code. The new Civil Code abolished polygamy and granted women equal rights with men in matters of divorce, child custody and inheritance. Despite this legal victory, to this day, customary and religious practices continue to exert more influence in the daily lives of millions of women in Turkey than the Civil Code does; this is especially true for women of lower socio-economic status.

The young Republic’s project of creating a secular State based on the uniform rule of law was extremely important in respect of women’s rights. Prior to 1923, law had been pluriform, with parallel legal systems based on the customary or religious rules of the diverse communities; the laws that applied to a particular citizen had depended on his or her religion, gender, occupational status or sect. For the Muslim woman, the Shari’a was the basic source of family law, though how it was interpreted and practised depended on the religious sect, ethnic group, class and region to which she belonged.

The new Republic’s establishment of a modern, uniform legal system had two significant advantages for Turkish women: (1) it provided a basis for counteracting or mitigating the harmful impacts of the parallel legal systems on women; and (2) the new Civil Code undermined the traditional power of religious authorities – including the religious right-wing – over laws pertaining to the family. The superseded parallel system had allowed religious traditionalists to impose laws governing family relations on their particular religious communities, and these laws had often been severely discriminatory against women.

The initial reforms envisaged and produced a unified, secular law; later improvements in the legal domain have ended the ‘official legal’ validity of customary and religious laws in Turkey.

2.8.1.1 Women and law during the Ottoman Empire

Until the political reforms of the 19th century, there was no unified legal code in the Ottoman Empire. Instead, the law applied differently to different members of society, depending on their social status, gender, profession, and religion or religious sect. The Qur’an formed the basis of family law for Muslim men and women. There was no civil marriage. A special contract between a man and a woman made in the presence of two witnesses was deemed sufficient to validate a marriage. The marriage contract was undertaken between the man and the woman directly, or between the man and the woman’s guardian. The sole condition for the marriage to be valid was that both the man and the woman gave their consent.

For Muslims, it had become the tradition for an imam (religious leader) or kadı (religious judge) to preside over the marriage ceremony because of the importance given to marriage, though the law did not require this. There was no age limit for marriage. The right of divorce was granted only to men and was not dependent on any legal justification or framework. Men could exercise this right at will; there was no need to seek the consent of the woman or the approval of a judge. Upon divorcing, the man automatically assumed all custodial rights over any children from the marriage.
Theoretically, women had the right to use their property as they wished, but in practice it was normally their husbands who made decisions about property. With respect to inheritance, women had fewer rights than men. For example, female children could inherit only half of what male children inherited.

With the initiation of social reforms during the Reform Period (1839-1876), there was an attempt to standardise and codify the legal system and to unify the law. There was also a heated debate on the status of women. In the period from the onset of major reforms in 1839 to the beginning of the Second Constitutional Era in 1908, the modernists particularly criticised arranged marriages, polygamy and gender segregation, and advocated for women to have free access to education and to relationships and marriages based on love. The conservatives, however, seeing such reforms as the influence of Western thought and a threat to the prevailing cultural identity, stressed the need to preserve the traditional status of women.

2.8.1.2 From religious to secular law: the foundation of the Turkish Republic
The War of Independence, led by Mustafa Kemal (Atatürk), culminated in victory for the reformists, not only over foreign occupying armies but also over conservative forces at home. The founding of the Turkish Republic in 1923 was followed by the introduction of several reforms, including the formal stripping of the authority of the Ottoman Sultanate and Caliphate and the abolition of the Shari’a. Secularised instruction at schools became compulsory. All religious courts (Islamic, Christian and Jewish) were abolished and secular courts based on European models were instated.

The Turkish Civil Code, introduced in 1926 and representing an important victory over the advocates of the Shari’a, banned polygamy and granted women equal rights in matters of inheritance, divorce and child custody. Women were given the right to vote in 1934.

2.8.2 Legal overview
Turkey has a unified, secular and standardised legal system. Article 2 of its Constitution states that “the Republic of Turkey is a democratic, secular and social state governed by the rule of law.” The principle of secularism is included in the Preamble to the Constitution, which states “...as required by the principle of secularism, there shall be no interference whatsoever by sacred religious feelings in state affairs and politics.”

Since the legal reforms of 1926, Turkey’s judicial system has been based on the continental European system. The 1926 Civil Code, now superseded, was translated and adapted from the Swiss Civil Code of the time and included several articles reducing women to a subordinate position in the family. For example, the husband was defined as the head of the marriage union, which gave him the exclusive right to choose the domicile, as well as authority over any children.

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359 Atatürk ("Father of Turks"), soldier, leader, statesman, reformer, and founder of the Turkish Republic, achieved independence for Turkey in 1923 and was its president from that year until his death in 1938.
360 The reforms, representing a political revolution, not only included the formal end of the Ottoman Sultanate and Caliphate and the abolition of the Shari’a, but also the secularisation of the State, the adoption of the Roman (Latin) alphabet for writing the Turkish language, and the encouragement of Western clothing for women and men. Most of these reforms were introduced by Kemal Atatürk, and therefore came to be known as Kemalism. The most sweeping reforms were implemented through the 1926 revision of the Civil Code, which recognised the equal rights of women in divorce, custody and inheritance.
361 In the Ottoman Empire, a system wherein the holder of the title Caliph, historically selected by a committee, claimed temporal and spiritual authority over all Muslims but was not regarded as a possessor of a prophetic mission, because Islam regards Muhammad as the Final Prophet.
The Civil Code was extensively reformed in 2001, dramatically improving the status of women and girls in the family. The supremacy of men in marriage was abolished and the full equality of males and females in the family was established.\textsuperscript{363}

The 1926 Penal Code, which was based on the Italian Penal Code, underwent extensive reform in 2004,\textsuperscript{364} largely as the result of a three-year campaign by women's NGOs. The revised Turkish Penal Code includes several revolutionary amendments ensuring gender equality and protection of women's sexual and bodily rights.

The Constitution guarantees the independence of the judiciary and prohibits any government agency or individual to interfere with the operations of the courts and judges.

\begin{section}{2.8.2.1 The Turkish Constitution} \textsuperscript{365}

The present Constitution, which is referred to as the ‘1982 Constitution’, is the third constitution of the Turkish Republic, following the 1924 and 1961 Constitutions. The supremacy of the Constitution is established in Article 11, which states that “The provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial organs, and administrative authorities and other institutions and individuals. Laws shall not be in conflict with the Constitution.”\textsuperscript{366}

According to the Constitution, unconditional and unrestricted sovereignty is vested in the nation. The people exercise that sovereignty directly through elections, and indirectly through the authorised bodies within the framework of constitutional principles; namely, the legislative, the executive and the judiciary, which in turn exercise sovereignty in their decisions. Legislative power is vested in the Turkish Grand National Assembly and cannot be delegated. Executive power and functions are exercised and executed by the President of the Republic and the Council of Ministers, in conformity with the Constitution and the laws. Judicial power is exercised by independent civil and criminal courts.

Article 10 of the Constitution states that equality is an inalienable human right: “Everybody is equal before the law irrespective of his or her language, race, sex, political and philosophical belief, religion, sect and other differences.”\textsuperscript{367} Special privileges may not be granted to any person, family, group or class.

This provision of the Constitution was amended in May 2004 so as to better guarantee the equality of women. As a result of this amendment, the statement “men and women have equal rights and the state has to ensure equality” was added to Article 10. This new formulation of the principle of gender equality embodies the obligation of the State to ensure \textit{de facto} equality; that is, equality in practice, not just in law. All State organs and administrative authorities are under obligation to comply with the right of equality before the law in all their actions, and to ensure that that right is actually realised by all.

An important step towards complete gender equality in the Constitution took place in October 2001 with an amendment of Article 41, redefining the family as an entity based on spousal equality, thus: “The family is the foundation of Turkish society and is based on equality between spouses.”

Property rights are regulated by Article 35: “Everyone has the right to own and inherit property. These rights may be limited by law only in view of public interest. The exercise of the right to own property shall not be in contravention of the public interest.”

\textsuperscript{363} New Turkish Civil Code, 2001, as amended from the 1926 Civil Code.
\textsuperscript{364} New Turkish Penal Code, 2004; contains over thirty amendments that protect women's human rights.
\textsuperscript{365} See n. 362 above.
\textsuperscript{366} Ibid.
\textsuperscript{367} Ibid.
### 2.8.2.2 Laws governing marriage

In Turkey, marriage is a registered official event, which takes place within a framework defined by legislation. Article 174 of the Constitution cites the principle of civil marriage as one of the fundamental ‘Reform Laws’ that date back to the foundation of the Turkish Republic. According to Article 143 of the Civil Code, religious marriage ceremonies cannot be held until the civil ceremony is complete.

According to Article 124 of the revised Civil Code, neither men nor women can marry before they reach the age of 18. The revised Civil Code corrected the previous discriminatory provision that had set different minimum marrying ages for men (17 years) and women (15 years). Yet the new minimum age for marriage is still below the age of simple majority (18 years), which is accepted as a precondition for legal competence and liability. The full and free consent of both parties to the marriage is a basic pre-condition that holds for minors and adults. In the case of minors, the permission of their legal guardians is also necessary.

Polygamy is forbidden in Turkey. According to Article 130 of the revised Civil Code, a person who wants to obtain authorisation for remarriage must prove that his or her previous marriage has been legally dissolved. A marriage will be considered null and void if one or both of the spouses is already married. Anyone whose civil status is recorded as ‘married’ in the official registers cannot remarry until this situation is corrected.

A religious marriage ceremony confers no legally binding rights in Turkey. The State is not involved in such ceremonies. A woman who has ‘married’ only in a religious ceremony can neither claim alimony in case of separation nor qualify as the legal heir to her husband's property in the event of his death.

In order to undergo a religious marriage ceremony, the couple must document that the official civil ceremony has been previously carried out. Violation of this rule is considered a crime.

### 2.8.2.3 Women in the family: the legal framework

Until the 2001 reform of the Civil Code, Turkish law designated the husband as head of the family. This clause has since been removed and, according to Article 186 of the revised Civil Code, the spouses are jointly to make decisions regarding the marriage union. With their labour and possessions, they are both to contribute towards the marital expenditures to a degree commensurate with their capabilities. This clause replaces the old principle that the husband is responsible for maintaining his wife and children.

#### 2.8.2.3.1 Negative perceptions about women persist

“A man in my town has ten children: eight girls and two boys. One day, the government came to conduct free vaccinations. He would only allow his boys to be vaccinated, saying that, since girls are like cattle, why do they need it?”

A new provision in the Civil Code gives spouses equal rights in all matters relating to the family home. According to this provision, neither spouse alone can annul a rental agreement in respect of the family abode, transfer ownership thereof, or limit rights related thereto without the explicit consent of the other. The spouse who is not the legal owner of the family abode can apply to the Land Registry to add his or her name as co-owner to the record. If the family abode is rented in the name of one of the spouses only, the spouse who is not party to the rental agreement can become a party to it by making a written statement to that effect addressed to the landlord or landlady.

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368 Marriage in Turkey is governed by several laws, including the Constitution and the Civil Code.
370 Ibid., Art. 145.
371 Marriage Regulations Act, Art. 15.
With the reform of the Civil Code in 2001, the authority to represent the marriage union no longer rests solely with the man. Nor does he have sole responsibility for managing the family’s savings. Men and women have equal rights to representation and are jointly responsible as regards to third parties. If one of the spouses abuses, or displays shortcomings in using, the authority to represent the union, the judge may, in response to an application from the other spouse, remove or limit that authority.

Women and men are equally entitled to engage in legal transactions with each other and with third parties.

2.8.2.3 Right to work: spousal consent

Under the 1926 Civil Code, a wife was obligated to seek permission from her husband before engaging in employment outside the home. Husbands did not have a similar obligation. In 1990, the women’s movement succeeded in having this discriminatory obligation abolished. Not until the 2001 revisions was this issue raised again.

Article 192 of the revised Civil Code, in its first clause, makes a clear statement that neither of the spouses is obligated to seek the other’s permission regarding a choice of work or profession. However, a second clause added to the same article makes a vague statement that “the harmony and welfare of the marriage union should be borne in mind when choosing and performing a job or profession.” Women’s groups throughout Turkey are concerned that violations of women’s right to work outside the home may be legitimised by arguments ostensibly based on the need to maintain “the harmony and welfare of the marriage union.” The women’s movement is seeking to change the wording of this clause.

In a new provision dealing with the financial contribution of each spouse to the family livelihood, Article 176 of the Civil Code gives both spouses the right to ask a judge to specify the size of the financial contribution that each should make. In so establishing the respective contributions, the judge must take account of housework, childcare and other unpaid labour in the business of the relevant spouse.

If the need arises and if one of the spouses makes an application to this effect, the judge, in order to protect the family’s economic assets or to secure the fulfilment of a financial responsibility resulting from the marriage union, can rule that disposals of assets specified by him can only be made with the consent of both spouses.

2.8.2.4 Divorce

The Turkish Civil Code of 2001 does not discriminate against women in respect of divorce. According to the revised Civil Code, either spouse can apply for divorce if the other has committed adultery; has plotted against the applicant’s life; has treated the applicant very badly or in a way that is severely detrimental to her or his honour; has committed a humiliating crime, or leads a dishonourable life, such that the applicant can no longer be expected to live together with him or her; has deserted the family home; or is incurably insane so as to render living together with him or her intolerable for the applicant; or if the marriage has irretrievably broken down and the spouses cannot reasonably be expected to go on living together.

The 2001 Civil Code uses the phrase “irretrievable breakdown of marriage” to indicate a wide variety of issues. For example, one of the spouses consistently declining to have sex with the other falls within the scope of this article and is considered the basis for grave incompatibility in marriage; it can constitute legal grounds for divorce.

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374 Ibid., Art. 189.
375 Ibid., Art. 190.
376 Ibid., Art. 193.
377 Ibid., Art. 199.
378 Ibid., Art. 161.
379 Ibid., Art. 162.
380 Ibid., Art. 163.
381 Ibid., Art. 164.
382 Ibid., Art. 165.
383 Ibid., Art. 166.
The rule is that application for divorce is to be filed by the party who has the lesser responsibility for the breakdown of the matrimonial union, against the party who has the greater responsibility. If the spouse with the greater responsibility files for divorce, the other spouse may reject it. In that event, the divorce may be dismissed if the spouse with the lesser responsibility can convince the judge of his or her innocence and accepts the other spouse. However, if the couple remains unreconciled and has not lived together for a period of three years prior to the application for divorce, the matrimonial union is considered to have irretrievably broken down and the court rules in favour of a divorce upon the request of only one of the spouses.\textsuperscript{384}

The spouse who is deemed to be the injured party in the divorce is entitled to claim a reasonable amount of compensatory damages from the spouse who committed the act(s) that led to the divorce. The court can rule that this shall be paid in a single lump sum or in regular instalments.\textsuperscript{385}

\textbf{2.8.2.4.1 Alimony}

The party who finds him- or herself in a financially difficult position as a result of divorce may claim alimony to meet his or her living costs for an indefinite period of time, provided that he or she is not the party who applied for the divorce. The amount of alimony to be paid by the other party must be commensurate with his or her financial capacity. Previously, there was a clause that stipulated that for a man to be able to claim alimony from a woman, she had to be wealthy (as determined by a judge). This was challenged as being discriminatory against men, and was amended so that both spouses are now equally liable.\textsuperscript{386}

A court decides whether the alimony is to be paid in a single lump sum or in regular instalments. Payment of instalments of compensatory damages and/or alimony to the spouse terminates automatically if said spouse remarries or dies. Such payments are cancelled by court order if the receiving party cohabits with someone else as husband or wife yet without being formally married, ceases to be in financial need, or leads a ‘dishonourable’ life.\textsuperscript{387}

The court authorised to decide alimony cases is the local court in the region of domicile of the party who is laying claim to alimony.\textsuperscript{388} This provision has freed ex-spouses from the previously existing obligation to stay in or return to the region of the former family abode in order to claim alimony. That was restrictive for women and discouraged them from claiming alimony and pursuing previous alimony claims.

\textbf{2.8.2.5 Matrimonial property regimes}

The new reforms to the 2001 Civil Code establish various property regimes\textsuperscript{389} for marriages, establishing ‘equal division of acquired property’ as the regime that is applicable to all marriages by default. This regime entitles both spouses to an equal share of all assets accumulated during the marriage period. The original default property regime was complete separation of property; its main shortcoming was that, as most property tends to be registered in the man’s name, the women was often left with little to nothing after dissolution of the marriage.

Turkish traditionalists strongly opposed the new default property regime and insisted that separation of property be maintained as the default. They claimed that equal sharing of property acquired during marriage was contrary to Turkish traditions, would transform the union into a more corporate affair,
and would ultimately lead to the breakdown of the family — thus ruining Turkish society. However, the women’s movement won the debate.

The new default property regime applies whenever a couple does not choose one of the three other specified regimes before or after marrying (see textbox below, ‘Alternative matrimonial property regimes’). In order to choose a regime other than the default one before marrying, both parties must sign a contract in the presence of a notary or declare their mutual decision in writing while applying for authorisation to marry.

This default regime of ‘equal division of acquired property’ confers on each spouse an equal claim to property acquired during the marriage period, irrespective of each spouse’s occupation or economic status. This may be seen as recognising and assigning — at long last — an economic value to the contribution that women’s hitherto invisible labour makes to the well-being of the family and household.

Under this regime, there are two types of property: acquired property and personal property. All personal possessions and property accrued before the marriage, as well as gifts personally gained during the marriage are classified as ‘personal property.’ Acquired property is that which has been purchased by either spouse, and any gift they have received as a couple, after formalisation of the marriage union. Upon dissolution of the union, such property is equally shared between the former marriage parties. Personal property remains with the one who owns it.

In terms of the economic empowerment of women, this is a major achievement. Married women, as equal parties, now have good reason to feel economically stronger. The new property regime has increased their self-esteem and self-confidence.

Problematic, however, is that the law stipulates that the new default property regime (‘equal division of acquired property’) only applies to property acquired after 1 January 2002. This clause was a last-minute addition due to pressure from conservative religious and nationalist members of Parliament who opposed this new regime. Under the added clause, property acquired prior to 1 January 2002 remains under the old default property regime (‘separation of individual property’; for further details, see textbox below, ‘Alternative matrimonial property regimes’). In addition, to render the new regime operative, couples were initially required to register their marriages under the new system before 31 December 2002.

The women's movement in Turkey continues to fight for a uniform application of the new default property regime; in other words, that it should be operative by default for all property acquired during marriage, regardless of the time of acquisition.

### ALTERNATIVE MATRIMONIAL PROPERTY REGIMES

#### a. Division of shared property

This regime focuses on use of property rather than its acquisition. It divides equally all assets used jointly by the spouses or “for the benefit of the family”, and/or investments (and assets derived therefrom) that have been made for its future economic benefit, including those acquired before and during the marriage. However, any assets that are deemed to have been used “for other purposes” remain the property of the spouse who acquired them. This is ambiguous. In fact, the women’s movement strongly opposed attempts to establish this regime as the default property regime due to the difficulty of determining what is used “for the benefit of the family” and what “for other purposes”.

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391 Ibid., Arts. 202 and 219.
392 Ibid., Arts. 218-241.
b. Joint property
Under this regime, the spouses become joint owners of their assets and neither of them can dispose of his or her share independently. The parties define what is to be included in this regime by means of an agreement made between them at the time of marriage.\footnote{Ibid., Arts. 256-281.}

c. Separation of individual property
Under this regime, each party is the individual owner of the assets that are registered in his or her own name. After divorcing, both parties retain the assets that they owned prior to the marriage, as well as those that they acquired in their own name during the marriage. This was the default property regime under the former Civil Code.

2.8.2.6 Inheritance
In terms of inheritance, the four property regimes described above can be grouped into two basic categories: those that require a settlement of common assets in the event of termination (either divorce or death), and those that do not.

In the 'separation of individual property' regime each spouse owns the property registered in his or her name. Therefore, there is nothing to be settled or calculated. Property registered in the name of the deceased constitutes the legal inheritance and, as such, is divided between the heirs as stipulated by relevant legislation.\footnote{Ibid., Arts. 495-501.}

However, common assets are involved in the three remaining property regimes ('equal division of acquired property', 'division of shared property', and 'joint property'). In such cases, the first step is to settle the division between spouses in accordance with the rules of the particular regime. The surviving spouse obtains his or her share of the common assets and retains that which is recognised as his or her personal property, if any, under the rules of the particular regime.

What remains after division is considered to be the deceased's ‘legal estate’, which is then divided between inheritors as stipulated by law. According to Article 499 of the 2001 Civil Code, the proportion of the legal estate to be received by the surviving spouse varies according to whom it is to be shared with:

- If the other heirs are the deceased’s children, the surviving spouse receives one quarter of the estate.
- If the other heirs are the deceased’s parents, the surviving spouse receives one half of the estate.
- If the other heirs are the deceased’s parents and grandparents, the surviving spouse receives three quarters of the estate.
- If the spouse is the sole legal heir, he or she receives the entirety of the remaining estate.

The law specifies a minimum share of the deceased’s estate that must go to the surviving spouse, children, parents or grandparents.\footnote{Ibid., Art. 506.} The remainder can be bequeathed to third parties.

2.8.2.6.1 Inheritance by children
Children born out of wedlock whose descent was established through birth, parental recognition or court ruling have the same inheritance rights as those born in wedlock.\footnote{Ibid.} Similarly, adopted children have the same inheritance rights as the natural children of the adoptive parents.\footnote{Ibid., Art. 500.}
Under Turkish law, male and female children inherit equal shares of their parents' estate without discrimination. Three quarters of the ‘legal estate’ is set aside for the deceased’s children and is divided equally among them. The only apparent case of explicit discrimination under the old Civil Code, in respect of the inheritance of agricultural land, was corrected in the revised Civil Code.

2.8.2.6.2 Discrimination in inheritance of agricultural holdings

The previous Civil Code gave preference to the sons of the deceased in terms of inheritance of agricultural holdings. Only if none of the sons desired to inherit such a holding would the daughters of the deceased be able to request that it be assigned to them. The revised Civil Code has removed all such references to sons and daughters. Instead, priority is given to the heir who wishes to inherit and manage the holding and is competent to do so. In assessing competence, the capabilities of the contending heir are also taken into account and compared to those of the deceased’s spouse. The latter's rights over the agricultural holding take precedence, provided that he or she wishes to manage it.

A woman’s marital status does not affect her right to inherit from a blood relative. As Article 649 of the revised Civil Code establishes equality between heirs, women enjoy the same inheritance rights as their brothers. Even the will of the deceased cannot change a woman’s obligatory legal share in any way. In the event of any infringement of this right, the woman affected can take her claim to the judicial system.

2.8.2.6.3 Inheritance by non-citizens of Turkey

Under the revised Civil Code, foreigners who marry Turkish citizens are entitled to the same share of the total inheritance as their counterparts who are citizens of Turkey.

2.8.3 Customary and religious practices

Although the Turkish legal system is secular, unified and standardised, several customary and religious practices continue to shape the daily lives of women, depending on their social class, the geographical region where they live, and the ethnic and/or religious group to which they belong. The negative impacts of customary and religious traditions are generally more severe for women of lower educational attainment and socio-economic stratum; women who live in economically disadvantaged regions and/or belong to minority groups are less often able to benefit from legal reform, as, for example, is the case with Kurdish women living in the Eastern and South-eastern regions of Turkey.

Thus, whereas practices such as under-age, forced, religious or polygamous marriage, and ‘honour crimes’, constitute clear violations of either the Civil Code or the Penal Code, they continue to occur — often with impunity.

2.8.3.1 Lack of legal protection

The Turkish Constitution and the revised Civil Code both enshrine the principle of civil marriage, and religious marriages have no validity under Turkish law. Polygamy is forbidden and a religious marriage ceremony cannot be held before a civil one. Violation of the law on civil marriage is a criminal offence both on the part of the couple and on the part of the person who conducts such a ceremony.

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398 The term 'honour crimes' encompasses a variety of forms of violence against women, including 'honour killings', assault, confinement, imprisonment and forced marriage, where the ostensible motive for, justification of, or mitigation of the seriousness of, the violence is linked to notions of (natal) family, conjugal or community 'honour', which require the preservation of male control over women, particularly their sexual conduct whether real or perceived.


However, effective enforcement of these laws is rare. In practice, especially in rural areas of Turkey, civil marriage ceremonies are often omitted and replaced by religious ceremonies. The extent of this phenomenon has been such that the Government has been obliged to recognise ex post facto (retroactively) the legitimacy of these marriages.401

In the year 2000, seventy-five years after the enactment of the Constitution mandating civil marriage, 7.4 percent of all marriages in Turkey were religious only and lacked a civil marriage contract. The majority (53 percent) of these marriages occurred in the Eastern and South-eastern regions of Turkey.402 Moreover, research shows that one in ten women in those regions is in a polygamous marriage, despite the ban on polygamy.403 While the first marriage is normally arranged by the families involved, subsequent marriages are much more often based on love. Subsequent wives are normally married in a religious ceremony only, and therefore lack the rights under the law that legally married women are granted.

2.8.3.2 Negative effects of poor socio-economic situation

The greater prevalence of customary and religious practices in the Eastern and South-eastern regions of Turkey, many in violation of Turkish law, is largely attributable to socio-economic conditions, which, generally speaking, worsen as one goes from west to east in the country. For women and girls, poverty – especially when combined with negative traditional attitudes – seriously undermines the quality of life and the enjoyment of economic and social rights, for scarce family resources are rarely distributed to females. This is especially true with regard to education and health care of females.

Whereas families in the higher socio-economic strata tend to place equal value on the education of daughters and sons, at the lower levels a significant difference is observed in school attendance by boys (85.6 percent) and girls (76.5 percent).404

In 1999, 21.5 percent of girls did not attend school because their families, according to their own estimations, could not afford their schooling; only 14.4 percent of boys stayed away from school for the same stated reason.405 It should also be noted that there are significant regional and rural-urban differences406 in the quality of education.

Inequality in educational attainment exacerbates women’s economic disadvantage. For example, participation of women in the workforce is largely determined by their educational attainment.407 The lower the level of education, the less the participation in the formal labour market with its regular pay and social benefits. Women of lower educational attainment are forced into the agricultural labour force, where they form the majority (61.1 percent in 2001). Women also constitute the majority of unpaid family workers. These sectors are not covered by the social security system and are not protected by any trade union apparatus to help workers defend or negotiate their rights.

Due to the migration of men to urban areas in search of work, many rural women are forced to “assume the responsibilities on the land, without necessarily having access to the required resources, information and decision-making authority.”408

These factors combine to place many women in a helpless situation, where they lack both awareness of their legal rights and any power to claim them.

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405 Ibid., Table 3, p. 23.
408 Ibid. p. 41.
2.8.3.3 The Kurdish population

The fact that the laws guaranteeing women’s equality are at their least effective in the Eastern and South-eastern regions of Turkey is largely due to two factors: (1) the dominance of patriarchal tribal structures among the Kurdish population, which constitutes the majority in those regions; and (2) the intensive and extensive legal and non-legal discrimination affecting the Kurds. The tribal structures (aşiret) are organised around extended, clan-like families with tribal leaders and depend on and foster a spirit of group solidarity among the family members.

The family members are deemed to be responsible for upholding traditional customary laws and practices, including under-age marriage, bride price, and so-called ‘honour crimes’. The latter, in particular, are based on an ideology that assumes that women’s bodies are the property of the extended family, the tribe and the broader community, and that the collective honour of such kinship groups resides in the sexual probity of their women.

To add to the discrimination, Turkish is the sole official language of all governmental institutions, including the judiciary. Kurdish women, the majority of whom speak little or no Turkish, therefore have little recourse to the law for their protection, for they simply cannot understand its provisions. No official efforts are made to translate laws into Kurdish for their benefit.

2.8.3.4 Traditional practices

Research results published in 1998 showed that a wide range of customary and religious practices were having negative impacts on women, especially in the least economically developed regions of Turkey. For example, 16.3 percent of all women living in the Eastern and South-eastern regions had married before the age of 15, which used to be the legal minimum age for marriage according to the old Civil Code. (The reformed 2001 Civil Code raised the minimum age to 17 years for both sexes.) Just over half the women (50.8 percent) had not consented to their marriage, even though the consent of both parties is a precondition for marriage according to Turkish law. The proportion of women who thought that they would be killed by their husband and/or family members if they committed adultery was 67 percent, even though adultery is not considered to be a crime under Turkish law.499

Subsections 2.8.3.4.1 to 2.8.3.4.3, below, examine three such harmful traditional practices – bride price, dowry, and inheritance according to customary and religious law – with particular reference to property and inheritance rights.

2.8.3.4.1 Bride price

In rural areas, there is a traditional practice whereby the bridegroom pays a ‘bride price’ to the bride’s father in recognition of the costs incurred in raising her and to compensate her family for the loss of her services after the marriage.

This practice has no validity or place under Turkish law, which entitles any female, whether she be an adult or a legal minor, to reject a male marriage candidate. The bride price offered to her family in no way obliges her to marry the proposed groom.

In reality, however, families often pressure the daughter to accept the marriage offer so that they can obtain the money offered. Legally, the daughter has the right to resist her family’s pressure; when the official who carries out the marriage ceremony asks her if she wants to marry of her own free will, she has the right and the opportunity to refuse. If she does so, no one has the right to make her marry. Unfortunately, the pressure is often too great, and she succumbs and agrees to marry the proposed groom in order to appease her family. She may well be threatened with violence, and thus feels she has no choice.
Over the past few decades, the paying of bride price has been dying out. Changing economic conditions and the extensive publicity given to tragic events related to this practice have helped mobilise public opinion against it.

Even if a woman or girl bows to pressure and marries, Turkish law entitles her to file for an annulment, based on her declaration that she was coerced into matrimony. Of course, women and girls must first be aware of such rights before they can assert them, and the sad reality is that many are simply not aware of them.

2.8.3.4.2 Dowry
Turkish law has no provisions that relate specifically to the practice of giving dowry. According to the default matrimonial property regime discussed in Subsection 2.8.2.5, above, dowry falls under the category of the bride's personal possessions. This is because it is brought into the marriage by the bride, and is thus considered to be property that she owned prior to the marriage. Thus, the bride is able to retain the value of the dowry in the event that the marriage terminates, regardless of the reason.

2.8.3.4.3 Traditional inheritance practices

An example of customary and religious practices taking precedence over what is provided for in the Civil Code is the traditional inheritance share that women receive, or at least expect to be able to receive. As explained in Subsection 2.8.2.6.1, above, according to the 2001 Civil Code, female and male children have equal inheritance rights. However, especially in rural areas and generally in the Eastern and South-eastern regions of Turkey, girl children are often discriminated against when it comes to inheritance.

As a survey among nearly 600 women in the Eastern and South-eastern regions has shown, the inheritance share for girl children is determined almost solely by the customary and religious laws that are applied in those regions, even if such laws violate the Civil Code.

The table below shows the women's responses, according to their perceptions, to the question of what determines the inheritance share received by male and female children respectively. As the table shows, only about 26 percent of the women indicated that the Civil Code is the determining law for the inheritance of girl children, whereas, in respect of boys, nearly 39 percent of the women cited the Civil Code in this context. Also note that over 61 percent of the women stated that customary laws govern girls' inheritance, whereas less than 46 percent stated that the same laws govern boys' inheritance. These results indicate that although customary and religious laws in combination take precedence over the Civil Code both for girls and for boys in these regions, the proportion of girls excluded from benefiting from the gender equality principle of the Civil Code is greater than the proportion of boys excluded.
### Women’s Perceptions of What Determines the Inheritance Share for Male and Female Children in the Eastern and South-Eastern Regions of Turkey

<table>
<thead>
<tr>
<th>Inheritance perceived to be determined according to:</th>
<th>For female children</th>
<th>For male children</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001 Civil Code</td>
<td>25.9 %</td>
<td>39.1 %</td>
</tr>
<tr>
<td>Customary laws</td>
<td>61.3 %</td>
<td>45.5 %</td>
</tr>
<tr>
<td>Religious laws</td>
<td>7.5 %</td>
<td>8.2 %</td>
</tr>
<tr>
<td>The father’s will</td>
<td>–</td>
<td>4.5 %</td>
</tr>
<tr>
<td>Other</td>
<td>5.1 %</td>
<td>2.7 %</td>
</tr>
<tr>
<td>No response</td>
<td>0.2 %</td>
<td>–</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>100.0 %</strong></td>
<td><strong>100.0 %</strong></td>
</tr>
</tbody>
</table>

As previously stated, for a majority of girls (over 61 percent), customary laws were reported to determine the inheritance share they receive — and in most cases this would mean that they receive nothing. Another important result of the survey (not included in the table) is that an overwhelming majority (79 percent) of the respondents indicated that “according to customary laws, girls do not share in the inheritance”, while over 4.0 percent stated that “according to custom, female children are required to waive their rights to their share of inheritance.” Of the women surveyed, only 2.5 percent said that, according to custom, girls should receive some share of the inheritance, though they conceded that their share would be less than that of their brothers. A meagre 1.9 percent stated that custom dictated that girls and boys should inherit on equal terms.

As the table shows, the proportion of women who said that religious laws determined the girls’ share of inheritance was much lower, at 7.5 percent. In this respect, their accounts of the religious laws were more positive than the above accounts of customary practices. More than half (53.9 percent) of those who stated that girl’s inheritance was determined by religious laws believed that such laws recognised the right of girls to inherit, even though they would receive less than their brothers. Only 12.6 percent indicated that, under religious laws, girls received no share of the inheritance; a mere 5.1 percent said that such laws dictated that girls must waive their inheritance rights.414

Inheritance has nothing to do with the law, it has to do with practice — if I go to court to claim my rights, my family will disown me.415

Families employ various strategies to prevent the equal distribution of inheritance between their daughters and sons that is required by the Civil Code. For example, the father may transfer all his wealth to one or more of his sons while he is still alive so as to prevent his daughter(s) from getting a share. Another common practice is to pressure female children to waive their inheritance rights in a declaration approved by a notary. In fact, 30.1 percent of the women whose mother or father had died reported that they had been made to waive their inheritance rights; in many of these cases, they said they had been coerced by family members.416

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416 See n. 414 above.
2.8.4 Violence against women

More than a decade of activism around the issue of domestic violence was necessary to put the issue on the public agenda in Turkey. Now, thanks to law reforms, a woman assaulted by her husband may file a suit with the Court of First Instance for divorce, compensation or legal separation. She may also apply for a protection order or bring a separate criminal lawsuit against him. According to the Law on Protection Orders (the Law on the Protection of the Family), any member of a family who has been subjected to domestic abuse may file with a court for what is known as a ‘protection order’ against the perpetrator.

Under such an order, the accused must: (1) leave the home he shared with the spouse and/or children and not approach that home or their places of work; (2) not damage the property of the spouse and/or children (or of others living under the same roof); and (3) not arrive at the previously shared home while under the influence of alcohol or other intoxicating substances, nor use such substances in the shared home. Once such an order has been issued, the police, without the need for the victim to submit a written application, will conduct an investigation and transfer the related documents to the Public Prosecutor within the shortest possible time. A spouse who has not abided by a protection order can be sentenced to prison for three to six months.

The Penal Code itself does not provide for specific punishment for violence against a spouse. However, several clauses of the general Penal Code do provide for higher penalties in cases where violence is perpetrated against family members. Such higher penalties may be applied in cases of spousal violence.

2.8.4.1 The reality of domestic violence

Even though Turkey has these progressive legal protections in place, the majority of women who experience domestic violence are unable to benefit from them. They have little opportunity to protect themselves because they depend economically on their husbands and there is a general lack of support for them in Turkish society. Lack of legal aid and psychological counselling services deter women from claiming their rights or even learning about them.

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**VIOLENCE AGAINST WOMEN IN TURKEY**

- Of women who called an emergency telephone help service, 57 percent said they had experienced physical violence, 46.9 percent sexual violence, 14.6 percent incest, and 8.6 percent rape.
- According to a 1995 survey among women living in squatter housing (gecekondu) in the capital, Ankara, 97 percent said they had been assaulted by their husbands.
- According to a 1996 survey of middle- and upper-income families, 23 percent of women, when initially questioned, said their husbands were violent towards them. This figure rose to 71 percent when they were asked further questions about specific types of violence.
- Another study estimated that 58 percent of women suffered family violence, not only at the hands of husbands, fiancés, boyfriends and brothers, but also at the hands of the husband’s family, including his female relatives.
- In one study, out of 40 women who suffered violent deaths, 34 died at home, 20 were found hanged or poisoned, 20 showed clear signs of having been murdered, and 10 had experienced family violence before their deaths.
- According to another study of women in Ankara, 64 percent experienced violence from their husbands, 12 percent from husbands they had separated from, eight percent from partners they were living with, and two percent from their husband’s family. Sixteen percent said their husbands had raped them.

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417 The Law on the Protection of the Family, which came into force in 1998, is a progressive piece of legislation against domestic violence.
With nowhere to go to escape domestic violence, women have no opportunity to bring their abusers to justice. The few autonomous shelters established by women’s NGOs have been shut down due to lack of funds and the number of shelters established by the Government remains very limited. Moreover, there are no Government shelters for victims of domestic violence in three out of Turkey’s seven regions; namely the Black Sea region, Eastern Turkey and South-eastern Turkey — where the economic need is the greatest. Furthermore, in Southeast Anatolia, a very conservative and politically unstable region of Turkey, violent ‘honour crimes’ (see Subsection 2.8.3, above) are to an extent still culturally legitimised. Such a climate of intimidation keeps women from claiming their rights to be free from violence.

2.8.5 Turkey’s international obligations

Under Article 90 of the Turkish Constitution, international treaties duly ratified have the force of law and can be invoked in Turkish courts. Turkey has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and became a State Party to its Optional Protocol in 2002. Turkey has also ratified the Convention on the Rights of the Child (CRC).

On 15 August 2000, Turkey signed the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). At the time of writing, however, it has ratified neither Covenant.

At the regional level, Turkey is a member of the Council of Europe and is seeking membership of the European Union. In order to fulfil the commitments incumbent on members of the Council of Europe and to satisfy the membership criteria for accession to the European Union, Turkey has ratified a number of regional human rights treaties including the European Convention on Human Rights (ECHR, also known as the European Convention for the Protection of Human Rights and Fundamental Freedoms).

Pursuant to these international and regional treaties, Turkey has obligations with regard to human rights, including women’s rights. Inheritance rights, housing and land rights, the rights to education, health and equality — Turkey has agreed to uphold them all. It is essential that Turkey fulfil all these obligations not only in law, but in practice as well.

2.8.6 Conclusions and recommendations

Turkey is the only State in the Middle East and North Africa region that has comprehensively revised its laws and regulations with a view to abolishing and replacing those that discriminate against women. This removal of de jure discrimination against women is a very important achievement.

Nevertheless, de facto discrimination is widespread in Turkey and, very often, the equal rights recognised in law simply do not materialise in real life. The law is ignored and undermined by day-to-day practices — and there seems to be no prospect of these practices changing in the near future. Especially in rural and economically disadvantaged areas, diverse factors combine to make women vulnerable to violations of their legal rights.

While presenting Turkey’s combined fourth and fifth reports to CEDAW, the Government representative stated that a ‘Mentality Transformation Project’ aimed at supporting the implementation of the new laws was a Government priority. This is apt, for customary and religious prejudices and practices are the main cause of discrimination against women in Turkey today.

419 The area has seen decades of fighting between the Government and the Kurdistan Workers’ Party (PKK), which is striving for Kurdish independence in parts of south-eastern Turkey.

420 See n. 404 above.
The State and civil society must target these prejudices and practices in order to redress the unequal status of women. Awareness-raising, education and economic empowerment of women would be key elements of any programme aiming to eliminate de facto gender-based discrimination of all kinds, including discrimination in the area of inheritance rights.

2.8.6.1 Work of women’s rights NGOs
Women’s rights organisations are very strong in Turkey. Women for Women’s Human Rights (WWHR) - New Ways is a leading organisation that successfully fought for reform of the Civil Code and the Penal Code. It is currently involved in ongoing campaigns to combat violence against women and achieve further reform of the Penal Code, particularly as it relates to ‘honour crimes’. Not only is WWHR - New Ways at the forefront of legal change, it often functions as the international voice for women in Turkey.

Several other organisations, including the Purple Roof Foundation, provide much-needed focus on the issue of violence against women. Baskent Kadin Platform (Capital City Women’s Platform) works towards greater rights for women throughout the country, with particular emphasis on legal aspects and women’s participation in politics.

In response to the lack of rights awareness, which is more prevalent in areas outside the major urban centres of Istanbul and Ankara, organisations such as Ymece host suburban community centres in order to reach women who are unable to come into the city centres for training and information. These centres provide a much-needed space for women to come together and discuss the issues that concern them — something that is often impossible in Turkey due to the patriarchal nature of families and communities. Living in a male-dominated and male-oriented society, Turkish women, though strong, are often made to keep quiet regarding their needs, which works in favour of men.

Things are gradually changing, and there is a clear way forward. As this country report has shown, some of Turkey’s laws are the most progressive in the entire region of the Middle East and North Africa. A tumultuous and fascinating history has led to these reforms, and Turkish women are eager to take them even further.
A woman and her two children at their two-roomed home in Al-Zarqa, near Amman, Jordan, Sept. 2004. She had invited the COHRE fact-finding team in to see her deplorable living conditions. The rent was exorbitant. Jordan’s poor can only dream of adequate housing.
OBSTACLES AND CHALLENGES TO WOMEN’S INHERITANCE IN THE MENA REGION
As the country reports in Section 2 revealed, the situation of women's inheritance appears to be largely uniform throughout the region of the Middle East and North Africa (MENA). In all but one of the eight States examined – Turkey – the laws governing women's inheritance are non-secular, derived from religious principles.

Given this basic uniformity of inheritance law, one might reasonably expect that such law would be properly and beneficially applied throughout the region. Unfortunately, this is not the case: misapplied traditions, diverse interpretations, cultural norms and social pressures — all influence and complicate the system of inheritance in a variety of ways.

Undoubtedly, the law is an essential element that women must have on their side if they are ever to achieve equality in inheritance; yet here, as in other areas of life where women are denied substantive equality with men, clearly there are both legal and non-legal obstacles to women’s full enjoyment of their rights.

This section summarises several major obstacles and challenges to women’s inheritance rights, as observed in the MENA region. For the purpose of comparison and – more importantly – with a view to finding a way forward for women, these are evaluated with respect to State obligations set out in international human rights law.

3.1 LACK OF ADEQUATE LEGAL PROTECTION

Legal and political systems are put in place to regulate society’s actions and to protect all persons’ interests and rights. Serious problems occur when such systems protect and serve specific groups rather than all, which constitutes a failure to meet the standards of equality and non-discrimination set by international law.

The adoption of policies and laws that impose an inferior status on women is indicative of a disregard for women's human rights. No State in the world today can justifiably claim that its laws completely protect women's rights. Unfortunately, many States have legal systems in place that – directly or indirectly – have the effect of further degrading the already low status of women under their jurisdiction. As Section 2 made evident, several such States are found in the Middle East and North Africa region.

3.1.1 The confusion of a plural legal system

As explained in Section 2, most States in the MENA region have a plural legal system: juxtaposed sets of civil, religious, traditional and customary laws govern the day-to-day life of citizens, often resulting in an inescapable and confusing quagmire of rules and principles. This creates considerable confusion not only in interpretation but also in applicability of the laws. The consequences for women are particularly negative:

Women are those who are generally most disadvantaged in societies where parallel legal systems — separate judicial systems for religious or ethnic minorities, or judicial systems whose laws are based on traditions which vary from one region to another — exist, as the laws implemented tend to be the ones with the most negative consequences for women. \(^{422}\)

Throughout the MENA region, Islam or some interpretation thereof regulates everyday human interaction and matters of ‘personal status’, including inheritance. In several MENA States, religion also influences and/or forms the basis of other laws, including those governing contracts and land, and some criminal laws.

All States in the MENA region also have a system of secular civil laws. All these States have a constitution that sets forth the basic principles of law; most have a civil code based, to an extent, on European models. Additionally, commercial codes, penal codes, labour laws, environmental laws, insurance and social security laws are mostly based on secular ideologies. Such laws shape private and public statutes. Throughout the region, it is primarily issues related to personal status that remain solely based on religion.

Legal reform took place throughout the MENA region in the nineteenth century, at a time when most of the MENA States were part of the Ottoman Empire or under colonial rule. Laws governing personal status and family relations – including inheritance – were written in an attempt to codify the relevant principles and rules of Islamic jurisprudence.

Yet, for the most part, European colonial authorities, while trying to modernise and secularise fields such as criminal or administrative law, determined that family relations should continue to be governed by traditional local rules, which were mainly derived from fiqh, or classical Islamic jurisprudence. The colonialists preferred to leave ‘personal’ matters to the traditions of those they colonised, a ‘policy’ that was also applied in many other countries outside the MENA region while they were under European colonial rule. Colonisers generally sought to guarantee themselves political and commercial control — they did not exhibit much interest in affairs at the familial level.

There are several ways in which the confusion of the plural system plays out, as the following three subsections (3.1.1.1-3.1.1.3) reveal.

3.1.1.1 Pervasiveness of religious law

International human rights law has recognised that the State must play a role in regulating the sphere of family relations, in order to protect those vulnerable to abuse. Of the relationship of State to family, international human rights law says: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” \(^{424}\)

Under Islam, the distinction between the public and the private sphere is blurred. The religion prescribes actions and behaviours that take place in both spheres. Similarly, it makes no distinction between religious practice and everyday life: its teachings guide both, in particular as regards religious rituals as well as life relationships.

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\(^{421}\) The term ‘civil law’ has several different meanings. However, throughout this publication it is used exclusively in the sense of statutory, or formal, secular law.


\(^{424}\) International Covenant on Civil and Political Rights (ICCPR) (see n. 8 above), Art. 23, para. 1.
Section 2, above, highlighted the pervasive influence of the *Shari’a* (the body of law inspired by Islam) in both the public and the private sphere, as well as its impact on women’s lives at all levels.

Even in Turkey, where secular law – nominally – governs all aspects of personal status, the application of religious law in matters of inheritance is still widespread, especially in areas outside Istanbul and other major urban centres. During its fact-finding mission, the COHRE Women and Housing Rights Programme (WHRP) interviewed many women in several areas in and outside Istanbul, and were repeatedly told that although the *Shari’a* rules are supposed to govern inheritance within Muslim communities, women are usually denied even the lesser share prescribed by those rules.

“Women have the rights in law, better than in many places, but women are vulnerable, as they do not want to be separated from the family network, so they agree to receive their share according to *Shari’a* prescriptions. However, for many, many women even that share is taken from them.”

Section 3 examines what happens when such laws are misapplied and used as justification for violations of women’s rights.

In the face of such pervasiveness of religious law, which goes far beyond what is codified or formalised, the State has not played its proper role, as defined by international human rights law, of seeking to change those aspects of the *Shari’a* and its interpretation (*fiqh*) that have been used to place women in servient positions. Indeed, pursuant to such international law, the State has a duty to ensure that it protects women’s human rights: it must ensure that all aspects of the law which favour women’s rights are enforced, and that aspects of the law which do not have that effect, or are being implemented in such a way that they do not have that effect, are changed. This is a duty on all States who have signed up to international human right law; in particular, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

### 3.1.1.2 Constitutions v. personal status codes

“While constitutions of Arab countries guarantee equal rights for all their citizens, irrespective of their sex, specific provisions in the personal status laws ‘extend privileges to men in the family (in the areas of marriage, divorce, and child custody) which are denied to women’ thereby producing the inequality women experience before the law.”

Confusingly, in Arab States including those of the MENA region examined in Section 2 of this report, constitutional provisions guaranteeing the equality of all citizens before the law exist alongside, and contradict, laws in the area of family relations which expressly subject women to the authority of their male kin. The constitutions of some Arab States stipulate that the *Shari’a* applies not just in the area of family law but across the entire legal system — which is a new phenomenon concomitant with the rise of the Islamic religious state. Iran, for example, has adopted a constitutional principle of general supremacy of the *Shari’a*.

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426 CEDAW (see n. 24 above), in Art. 2, places particular emphasis on the obligation of States to reform laws (whether they be formal or informal, statutory or customary) that either directly or indirectly discriminate against women, http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article2
EXAMPLES OF LEGAL SYSTEMS WITH TWO FACES

Lebanon
The Constitution of Lebanon, in Article 7, provides for gender equality. However, the scope of this provision has not been extended to apply to the law of the various religious communities, which have remained unaffected by the dictates of the State. The State has neither appraised the rules of personal status within each religious community nor subjected them to the constitutional principle of gender equality.

Tunisia
As in other Maghreb States, the legal system in Tunisia presents various paradoxes, which are nowhere more evident than in the fact that the Government is secular whereas the law is dominated by the Shari’a. The Constitution of Tunisia clearly provides for equality of the sexes. Yet, while the secular system is gradually becoming more and more pervasive in society, the Shari’a system remains authoritative in day-to-day family life.

In this sense (see textbox above), States simultaneously fulfil and neglect their obligations under international law, especially CEDAW. CEDAW specifically obligates States Parties to enshrine equality in their Constitutions and to make further provisions in their legislation to ensure that it enforces equality. The MENA States examined in Section 2 and/or visited by COHRE fact-finding missions have only partly fulfilled their obligations under CEDAW.

CONSTITUTIONS IMPLICITLY OR EXPLICITLY PROTECTING EQUALITY OF THE SEXES

Egypt, Art. 11: “The State shall guarantee the proper coordination between the duties of woman towards the family and her work in the society, considering her equal with man in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence.”

Jordan, Art. 6: “Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion.”

Kuwait, Art. 7: “The State safeguards the pillars of Society and ensures security, tranquillity, and equal opportunities for citizens.”

Lebanon, Art. 7: “All Lebanese are equal before the law. They equally enjoy civil and political rights and equally are bound by public obligations and duties without any distinction.”

Morocco, Art. 5: “All Moroccans are equal before law.”

Tunisia, Art. 6: “All citizens have the same rights and the same duties. They are equal before the law.”

Turkey, Art. 10: “All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations.”

3.1.1.3 Formal v. informal
Although personal status law in the MENA region is formally codified, in its application it is still largely open to interpretation. There are two reasons for this: firstly, such law is based on a system of religion; and, secondly, its formal structure is only accessible to a select few.

To be more explicit, religion – in its manifestation as customs and laws – can be and, unfortunately, often is manipulated in ways that benefit the interests of only a few. Thus, laws stemming from religious principles and practices are often applied selectively and are thus prone to deliberate misinterpretation. Furthermore, the law as formally codified only works for those who are able to access the court system — and in the MENA States, such persons are usually not women.
What the legal systems of these States have in common, as already noted in Subsection 1.3, above, is that the personal status or family codes are based on the Shari'a, which is a synthesis of Qur'an, sunnah and fiqh (see Glossary). Yet, as the country reports of Section 2 illustrated, there is tremendous variation in the interpretation and implementation of Islam-inspired laws in Muslim societies. Most Muslims would agree that the Shari'a is applied in various ways according to particular interpretations.

This raises the highly controversial and much-debated issue of whether the Shari'a is ‘divine’ and therefore, by definition, immutable and inflexible, or whether the fact that it is based on religious customs and principles from several sources, including the Qur'an, makes it open to interpretation. Although discussion of this issue goes far beyond the scope of this publication, it must nonetheless be touched upon, for it lies at the heart of much of the legal confusion and plays a pivotal role in the ways in which the law protects – or, more often, fails to protect – women’s rights.

Given the current upsurge of religious fundamentalism within the Muslim faith, and the increasing adherence to the dogma that the laws governing personal status come from a single religious source, it is difficult to envisage that there will be a widespread willingness to revise those laws to eliminate discrimination against women. Nevertheless, recent revisions of personal status codes in Morocco and Tunisia demonstrate that such laws are not immutable. “It is easier to justify domination by divine will than by the will for power.”

Some scholars and activists propose alternative interpretations of religious texts that would reduce and even eliminate discrimination against women, based on the principle that religion should be applicable to present-day realities. Some even say that contemporary interpretations of the Shari'a in particular and Islam in general – which, for example, take into account that a majority of women now work – are in fact mandated by the Qur'an. Accordingly, some see an obligation to ensure that the laws inspired by Islam are in line with, and truly reflect, contemporary realities. The debate is a complex one and is yet to be satisfactorily resolved.

Given this disharmonious situation, the plural legal system creates even greater confusion. With the disparity between formal and informal law, as well as the ongoing debate as to whether the religious laws are immutable or interpretable, the assurance of positive law is missing from the legal system. Constitutional guarantees of equality seem to be empty promises, and religious laws, even those that protect women’s rights, are often wilfully misinterpreted. Any attempts to ensure full protection of women’s rights to equality and non-discrimination, especially with regard to inheritance issues, are lost in this quagmire.

HISTORICAL CONTEXT OF QUR’ANIC RULES OF SUCCESSION

The Qur'an, the basis for personal status law, was written in a particular historical and social context; it came into being during a period known in the Arab world as Jahiliya (‘the era of ignorance prior to Islam, marked by barbarism and unbelief’). The role of Islam, often called the ‘enlightening religion’, was to make society more just.

At that time, around 1400 years ago, Islam revolutionised the practices of the Arab peoples. Tribal and largely nomadic (see, for example, Subsection 2.3.2.2 on the Bedu, above), they did not allow their women to inherit or own property independently, as this could jeopardise the integrity of the tribal property. In accordance with the new Qur'anic rules, however, daughters of the tribe were given the right to inherit property and could even alienate it from their father’s tribe when they got married.

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429 See further, Section 5: Strategies and solutions; in particular, Subsection 5.2.1.1 on Ijtihad.

3.1.2 Lack of equality in inheritance law

The rules governing inheritance are similar in all Muslim States, reflecting the rules of classical Islamic Sunni or Shi’a jurisprudence on the subject. The jurisprudential rules themselves are largely based on generally accepted, specific interpretations of verses of the Qur’an pertaining to inheritance. The basic purpose of the Islamic system of inheritance is to guarantee the material rights of the surviving family and relatives of the deceased. Heirs are divided into three categories, depending on their degree of relationship with the deceased. (See Subsection 1.3.1.1, above.)

Although the shares that the various categories of heirs receive are pre-defined, the general principles are derived from interpretations of the relevant Qur’anic verses and vary from school to school. Generally speaking, the legal codes of most MENA States reflect the principles governing inheritance in Sunni jurisprudence. Morocco’s Moudawana, or Family Code, provides a good example. (For details, see Subsection 2.5, Morocco, above; in particular, Subsection 2.5.3.1.)

As explained in Subsection 1.3.1.2, above, the gender inequality reflected in the shares is generally justified as follows:

Male members of the family are regarded as having the duty to protect and provide for those females and dependants who remain within the family. In recognition of this responsibility, the males are allocated a larger share of the family wealth. Proponents of the system argue that if equal shares of the property were assigned to male and female family members, it would be unjust for the former, as they shoulder greater financial responsibility than the women. Thus, the argument goes, the pre-defined inheritance shares attempt to strike a balance between rights and responsibilities.

This justification is not in line with women’s independent rights, for it presupposes that women should depend on men for their financial well-being. This constitutes a system in which males have financial power over females. Unfortunately, this financial responsibility or superiority has often been, and continues to be, too widely interpreted as overall or even total control, a notion that stems from the ideology of the ‘protector’ and ‘protected’. In practice, this enforced dependence, far from protecting women’s human rights, generally has negative and sometimes dangerous consequences for women.

Furthermore, this justification ignores the fact that women contribute financially to the household. Indeed, increasing numbers of women in the MENA region are working and providing some or all of their earnings for payment of household expenses and for family savings. In 2004, the UNIFEM report Progress of Arab Women showed that women represent an ever-increasing proportion of the active workforce in the Arab world, with a high of 43.7 percent in Mauritania and a low of 14.5 percent in the United Arab Emirates. It is only reasonable to expect that this trend should lead to a general recognition of women’s economic contribution and a drastic rethinking of the notion that they should be financially dependent on men.

IS A WOMAN WORTH HALF A MAN?

Many claim that inheritance under the Shari’a prescribes that women are ‘worth half a man’. Indeed, this seems to be the case in the inheritance shares to which a brother and a sister of the deceased are entitled. However, it should be noted that there are situations when females and males are entitled to exactly the same amount. For example: both the mother and the father of the deceased inherit one sixth, and the step-brother and step-sister inherit the same share as each other. For brother and sister, though, and for widower and widow, the shares are unequal.

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431 Ibid., pp. 18-19.
433 Clauses of the Moroccan Moudawana, in Arts. 338-340, stipulate specific shares for various categories of heir.
International law requires that females and males should be treated equally in all matters, including inheritance. Thus, by rights, a female and a male who have the same degree of relationship to the deceased should receive equal shares of his or her estate. The obligation on males to maintain dependants does not sufficiently justify reduction of those rights for ‘dependent’ females: firstly, the system supports neither women’s equal rights nor women’s agency (that is, women’s ability to make their own decisions and act on them); and, secondly, such a system is wide open to abuse and neglect and cannot be relied upon to protect women adequately.

3.1.2.1 Complex equations
As shown above (see, in particular, Subsection 1.3.1.1), the rules governing inheritance under Islam are simple in that specific fractional shares are clearly defined for specific relatives, yet complicated in that consideration of both (1) a particular heir’s degree of relationship to the deceased and (2) the existence or non-existence of other heirs often presents mathematical problems for which the rules themselves provide no solution.

Furthermore, from a practical perspective in today’s complex world of property ownership and different forms of assets, a share-based system is difficult to apply. As in other countries that have rules of intestate succession based on fractions or percentages, it is difficult to divide the estate according to the rules when, for example, it is tied up in the home or in land that has little value if apportioned. Some States, including Tunisia, have attempted to redress this situation to some extent by introducing marital property regimes that allow for equal division of the estate in the event of divorce, yet even this can be difficult. A house or other building cannot easily be split into equal halves, let alone thirds or even eights. Clearly, if the estate is to be apportioned in accordance with the rules and consists solely of the marital home, it must first be sold. Liquidation of the marital home can, of course, have serious consequences for the widow.

Often, especially in cases of land inheritance, the necessary division of the estate acts as a strong impetus for women to give up their rightful share, either voluntarily or with ‘persuasion’ from relatives. The justification for this varies, but usually centres on the argument that giving a woman or girl her share would break up the land or other property that would be worth more as a whole. In the case of a small estate, the fraction that the woman or girl should receive in principle is so small that it may not be worth the trouble of making a claim for it. Often, women are offered the least desirable parcel of land, making it even less worth claiming:

The share of the land I was to receive was too small, so I left it to my brother — now I have nothing in its place, and my brother does not bother to help me. This system cannot be applied fairly.434

3.1.2.2 Specific inequalities in law

3.1.2.2.1 Guardianship
In plural legal systems such as those of the Middle East and North Africa, where religious and civil laws co-exist in a confusing mix, there is a tendency to disregard women’s right to equality and to attach great importance to patriarchal religious authority. An important example of this is found in the concept of guardianship that still pervades the region’s personal status codes and family law. Also noteworthy is the fact that the personal status codes of all the States examined in Section 2 of this report (except Turkey) – indeed, of all States in ‘the Arab world’ of the MENA region – define the husband/father as the legal head of household.

Many patriarchal interpretations have held that the acknowledgement in the Qur'an of the differences between men and women, as well as its provisions clearly protecting women's rights, are indicative of women's inherent weakness — for only the weak need protection. The many facets of the discrimination against women that is prevalent in the MENA region today reflect the paternalistic attitudes that stem from the belief that women, in their weakness, require the protection and guardianship of their father, their husband's brothers, their uncles and/or other male relatives.  

"It is in respect of personal status that Jordanian women are denied their equal rights with men. As in most Arab countries, the central concept is the idea of 'female guardianship': women exist under the legal guardianship of their husbands, fathers or [other] male members of their family or tribe. Their 'civil rights' are placed under the control of these guardians. Women are therefore not legally entitled to make basic decisions for themselves. These decisions relate, for example, to the choice of who[m] to marry, the right to divorce, the right to take up employment and the right to leave the country. Although the personal status codes (PSC) are 'only' family law, they form the basis for discrimination against women in all aspects of their lives in both the public and private spheres."

3.1.2.2.2 Marriage

In most States of the MENA region, civil law marriages are not accepted. If a couple enters into marriage through the civil system, the marriage is not considered valid until a religious ceremony has also taken place. In Lebanon, civil marriage is not recognised at all: no option is available for women and men who wish to marry under civil law only.

According to the Qur'an, marriage is considered a contract obligating the husband to maintain his wife, the children and the general household both financially and emotionally, while obligating the wife in turn to obey the husband and care for him, the children and the household. The wife must be provided with the lifestyle she was accustomed to prior to marriage. To some extent, this explains why women and men rarely marry across social and economic class boundaries.

The legal systems of many countries around the world define the rights and responsibilities of married partners by applying patriarchal principles as enshrined in customary and/or religious laws and in traditional practices, rather than by complying with the principles clearly established in international human rights law; in particular, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These deviations from international law in domestic laws and local practices relating to marriage have wide-ranging consequences for women, and invariably impede the realisation of their right to equal status within marriage. Generally, for example, the husband is automatically accorded the status of head of household and primary decision-maker, which directly contravenes CEDAW.

"In many Islamic countries, written legal codes quite officially exclude women from basic human and civil rights, placing them into a status of lifelong dependency and subordination to the power of a male relative or husband."  

3.1.2.2.3 Divorce

As Section 2 made evident, the divorce laws of most MENA States enshrine gender inequalities that are to the serious detriment of women — though it must be acknowledged that this is a field in which significant improvements have been made in the past few years. In some jurisdictions (for example, Morocco and Iran), women were not allowed even to request divorce until recently.

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435 Sultan (n. 427 above), footnote 7, p. 9
With the exception of Turkey – and, to some extent, Tunisia and Morocco (which recently reformed their personal status or family codes in the direction of equal rights for women and men to initiate divorce proceedings) – women are only entitled to ask for a divorce in extreme circumstances, including the husband’s: abandonment; failure to pay maintenance or care for the family; violence amounting to criminal assault and battery (simple domestic violence does not suffice); infidelity; and neglect.

Repudiation (talaq) by the husband is still allowed in a limited number of MENA States. For example, in Iran and Morocco a man may divorce his wife for any reason (through talaq). However, in order to be valid, the divorce must be completed in the courts: any prior pronouncement of talaq is considered invalid until registered in the courts. This procedure includes a court-ordered settlement of all financial matters in order to protect the wife.\textsuperscript{439}

Mutual consent by the parties is not considered grounds for divorce. In Morocco, for example, although both spouses must consent to a divorce, this alone does not suffice: divorce can only be judicially granted on specific grounds. In the Arab world in general, when a woman applies to an Islamic court for a divorce and the husband does not wish to repudiate her, the procedure can be very lengthy and usually fails. In many cases, women are thus compelled to remain in unsatisfying or even violent relationships.

After divorce, the mother is given custody only over very young children until they are old enough to go to the father: among the Sunni, this age limit is seven years for boys and nine years (or roughly the onset of puberty) for girls; among the Shi’i, it is two years for boys and seven years for girls. Upon divorce, the father is given immediate custody of older children. This automatic denial of child custody to women is another reason why divorce is an unattractive option for them.

Among both the Sunni and the Shi’i, the husband’s financial obligations towards his ex-wife are limited to maintenance during the waiting period known as ‘eddeh,\textsuperscript{440} during which she cannot remarry. In some cases of judicial divorce on grounds of marital discord, the wronged party may be entitled to appropriate financial compensation. In all cases, however, the wife loses her right to maintenance once the obligatory ‘eddeh is over. Only if she is granted custody (when the children are too young to go to the father or the court decides in exceptional circumstances that the children should stay with the mother) is the maintenance period extended. In such cases, the husband is required to maintain his children – but not the ex-wife – until the age of adulthood for boys and marriage for girls.

Overall, divorce laws in the MENA States and elsewhere in the Arab world keep women imprisoned in bad marriages — because they understandably fear poverty and the prospect of losing their children.

\textbf{3.1.2.2.4 Mahr, or bride price}

When the marriage is contracted, a sum of money is stipulated to be paid by the husband to the wife or her kinsmen before or after the wedding. This is called mahr (‘marriage settlement’ or ‘bride price’). Before a divorce can be granted, the man who wishes to divorce his wife must pay back the full amount of the bride price.

\textbf{3.1.2.2.5 Maintenance}

In most of the MENA States, as explained in the introduction to Subsection 3.1.2, above, the personal status codes restrict women’s share of the deceased estate on the grounds that they are entitled to maintenance. As stated in Subsection 3.1.2.2.2, above, married men owe their wives and children complete financial maintenance, to provide for their housing, clothing and all other essential needs. The wife, ‘in repayment’, owes her husband obedience and care of the household. Any amount of money that the woman may contribute to the household is considered a gift. It is not recognised as being of legal significance.

\textsuperscript{439} Rand Corporation (n. 438 above), p. 19.

\textsuperscript{440} ‘Eddeh (see Subsection 2.2.4.3.1 above) is the period of time, specified by the Shari’a, that a divorced or widowed woman must wait to find out whether she is pregnant. After divorce, if there have been no signs of pregnancy for a period of three months, the ex-husband can be sure that his former wife will produce no more children for him to support, and the women is then free to remarry.
The Qur’an prescribes that men should bequeath to their widows one year’s maintenance and guaranteed residence, yet the personal status laws examined for the purposes of this publication do not codify this prescription. They refer only to maintenance in the event of divorce — not after the husband’s death.

The various rules governing maintenance are too complex to examine fully here, yet it is clear that the system can and does have negative consequences for women. If a women is granted the maintenance she is entitled to, she is essentially beholden to her benefactor and under his control; if the maintenance is not forthcoming, she is usually left without financial security.

Throughout its fact-finding mission, the COHRE Women and Housing Rights Programme (WHRP) was told that if an employed woman is contributing financially to the household (which is rarely recognised, even informally, and certainly has no bearing on inheritance), males in the family are more likely to deny her any kind of maintenance, stating that she does not need it anyway. In this respect, not only does a woman lose her inheritance rights but, if she is working, she is further punished and denied maintenance.

The reasoning, noted above, that maintenance is justification for women to be accorded lesser inheritance rights has two fundamental flaws:

1) Self-evidently, the system of maintenance makes women dependent on men, robbing them of their independent human rights and their own agency (that is, the ability to make their own decisions and act on them), especially their human right to self-determination, which is guaranteed by Article 1 of the International Covenant on Economic, Social and Cultural Rights:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2) In many cases, men fail to fulfil their obligation to maintain their wives and other female relatives.

As reported in Section 2, above, and as the WHRP was repeatedly told during its fact-finding mission, men often promise to maintain women in accordance with the Shari’a merely to persuade them to give up their rightful share of inheritance. Once that is done and the promise broken, the effects on women can be devastating: many are left destitute after the death of their fathers or husbands.

3.2 FAILURE TO DOMESTICATE INTERNATIONAL HUMAN RIGHTS LAW

Although all the MENA States examined in Section 2, above, have signed and ratified major international human rights instruments, most of them have also made reservations to certain provisions. Many of these reservations effectively negate substantive obligations.

Ratification with reservations is permitted for almost all treaties and covenants, provided those reservations are not incompatible with the ‘spirit’ of the treaty or covenant in question. For example, CEDAW, Article 28, paragraph 2 states that: “A reservation incompatible with the object and purpose of the present Convention shall not be permitted.” Reservations by one State Party can be challenged by other States Parties.

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441 The Qur’an, in Surah 2, al-Baqarah, verse 240, states that husbands should make a will in favour of their wives for the provision of one year’s maintenance and that wives should not be turned out of their residence, though they may freely choose to leave themselves. See, for example, http://en.wikipedia.org/wiki/Women_in_Islam#Directives_for_widows


MENA States have expressed reservations, in particular, to the following articles of CEDAW:

- **Article 2**, which prohibits discrimination against women in all its forms and obligates States Parties to adopt policies that eliminate such discrimination without delay;
- **Article 16**, which relates to discrimination against women in marriage and family relations;
- **Article 15, paragraph 4**, which grants women choice of residence;
- **Article 9, paragraph 2**, which grants women equal nationality in reference to the nationality of their children.

<table>
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<tr>
<th>State Party</th>
<th>Art. 2</th>
<th>Art. 16</th>
<th>Art. 15, para. 4</th>
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Only Tunisia refers specifically to matters of inheritance, in its reservation to Article 16:

The Tunisian Government considers itself not bound by article 16, paragraphs 1 (c), (d) and (f), of the Convention and declares that paragraphs 1 (g) and (h) of that article must not conflict with the provisions of the Personal Status Code concerning the granting of family names to children and the acquisition of property through inheritance.\(^{448}\)

This is surprising for a State that regards itself as becoming ever more secular.

Evidently, in the MENA region generally (with the possible exception of Turkey), the notions enshrined within personal status codes are so deeply ingrained in society that States are loath to run counter to them and would rather escape their international human rights obligations.

### 3.3 LACK OF ACCESS TO JUSTICE

The substantial law is one thing; the accessibility, concreteness and effectiveness of the remedies that it provides are quite another. In cases of human rights violations, access to effective legal remedies is essential, otherwise such rights cannot be fully realised.

Many factors determine whether remedies are effective. First and foremost of these is the very existence, or non-existence, of a system for remedies. The most obvious system through which to seek remedies is the court system, for an adequate determination of the law.

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\(^{444}\) Iran is not a party to CEDAW.

\(^{445}\) Palestine cannot become a party to CEDAW, as it is not an officially recognised State.

\(^{446}\) Turkey withdrew its reservations to Art. 16 and Art. 15, para. 4 on 20 Sept. 1999.

\(^{447}\) Turkey maintains its reservation to Art. 9, para. 2, which grants women equal nationality rights with men.

In some MENA States, personal status issues including those that relate to inheritance are dealt with in religious courts. Such courts are male-dominated and are notorious for their exclusion of women.

Even in States where secular courts hear personal status cases, judges and other court mechanisms tend to discriminate against women. In Jordan, the courts are widely regarded as biased against women and are thus largely not used by them. In Lebanon, State courts may only hear an inheritance case when applicable religious laws of two communities are in conflict — and then only to determine which law applies. The actual application of the personal status code and the division of the estate is then determined by the religious courts, which consist only of male judges and are discriminatory towards women. In Tunisia, personal status cases are heard by the religious courts, which generally rule in favour of tradition and male hierarchy.

Finally, in the Arab world it is traditionally understood that a woman, if she is to go to court at all, should be accompanied by a male. Religious courts enforce this rule strictly; in most secular courts, the rule does not apply but is imposed by society — it is regarded as a matter of propriety.

Thus, the effectiveness of the courts for women is highly questionable in terms of the general tendency to discriminate against them. The fact that the judiciary, both religious and secular, is male dominated is a critical obstacle to achieving equal rights and equal justice for women. Of course, there is no reason per se why the overwhelming presence of males should impede effective justice for women, but the unfortunate reality is that such courts show a tendency to favour judgments based on male-dominated tradition rather than on women’s rights to equality as enshrined in international human rights law.

### 3.3.1 Religion and the judiciary

Religion and the judiciary are juxtaposed in determining the status of women’s inheritance. In matters of family law, the connection between the religious and the legal order is established in two ways:

1. **At the legislative level,** where rules of classical Islamic jurisprudence (*fiqh*) are codified into State law. These codified rules may be applied in specialised religious courts or in general tribunals applying the State law in all fields.

2. **At the level of judicial application,** the State establishes religious courts, or recognises the competence of religious authorities of different confessional groups to decide on family disputes according to their own understanding and interpretation of the pertinent religious texts, whether codified or not.

In some MENA States, for example Palestine, religious or *Shari’*a courts rule on matters of personal status or family law. In Lebanon, the religious authorities of each religious community are vested with the power of settling family disputes and have jurisdiction over all matters concerning personal status within their communities.

In Jordan, the system of religious courts is divided into *Shari’a* courts and tribunals of other religious communities. In other States, personal status matters are heard in civil courts, which apply the *Shari’a*. In Kuwait, for example, such matters are heard in High Courts. Iran has established Special Civil Courts to hear matters of family law and inheritance.

In Egypt and Tunisia, both of which abolished their religious courts in 1956, courts of first instance hear civil, commercial, correctional and social law issues. Yet, even today, the judges that settle family disputes statutorily are trained in, and largely base their decisions on, the *Shari’a*.449

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449 Emory School of Law (online), Islamic Family Law: Legal Profiles: Egypt and Tunisia [draft texts], http://www.law.emory.edu/IFL/index2.htm
LACK OF WOMEN JUDGES

Throughout the MENA region, there is very low women's participation in legal professions, especially within the judiciary. This is even more apparent in religious courts. Obviously, this situation is conducive to a strong male bias in the decisions of the justice system. In Lebanon, the religious courts of the various religious communities are almost exclusively composed of males and have been characterised as solely male-oriented. In Iran, the new system of justice that came into effect after the Islamic Revolution of 1979 required the dismissal of all female judges. Women cannot pass sentence; their role has been gradually restricted to that of mere advisors to courts. In 2003, however, Egypt appointed its first-ever female judge, to the Supreme Constitutional Court.450

3.3.2 Lack of access to the courts

Most women in the MENA region regard the idea of going to court to claim their inheritance rights as foreign. Several women asked by the COHRE WHRP if they would ever take a claim to court were rather cynical about the idea. “Why should I, there is nothing to be had there, it would only cause me trouble,” said one woman in Mufraq, Jordan.451

Many women simply do not know that they have the option: they think that the courts are just for other types of disputes, such as commercial or criminal matters, and that they, as women, would never be allowed inside.

Another negative factor is that women throughout the region suffer a higher rate of illiteracy than men,452 especially in rural areas.453 This makes it difficult for them to know even that they have rights, let alone understand their details. Although they are aware that the Shari'a entitles them to some share of inheritance, they have no idea that this has been codified and that such shares are claimable. The fundamental human right to inherit is not known at all.454 In fact, human rights as they relate to women are rarely a topic of conversation, especially in the rural and/or poorer areas of the MENA region.

If a woman does not know that the law is there to protect her, she may feel that there is no hope of improving her situation. Even if she is aware of the law, she may not know how to begin to claim her rights — where to go, what court to apply to, from whom to seek help. Especially in the MENA region, where most women, especially those in the lower social and economic classes, are already disempowered, the prospect of bringing a case to court – let alone an inheritance case – is daunting if not unfathomable. The following quote is typical of women's experiences and feelings:

My husband was killed. I have demanded a part of the inheritance but my in-laws refuse to give it to me. I cannot take them to Court — how can I go against my family? Also, if I go to Court who will take me? It would be shameful to go alone.455

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452 For example, according to the 2004 UNIFEM report Progress of Arab Women, “in Egypt, according to the 1996 census, the illiteracy rate among population aged 10+ was 39%. The rate was significantly higher among women (50%). The rate was even higher among women living in rural Upper Egypt (72%). According to the official statistics, the illiteracy rate among women decreased by only 8% between 1996 and 2002 ...”. Progress of Arab Women: One Paradigm, Four Arenas, and More than 140 Million Women (New York: UNIFEM, 2004), p. 48.
453 For the table illustrating the female (15+) illiteracy rate and the gender gap in all Arab countries between 1995 and 2000, see ibid., p. 112.
454 As interviewees told COHRE on several occasions, rural women are more often deprived of their inheritance rights than urban women.
455 COHRE interview with Munta, one of several women at Madaba Community Centre, Jordan, 27 Sept. 2004.
The negative social and cultural perceptions of women taking recourse to legal procedures in order to settle a family dispute can also be a strong deterrent.\textsuperscript{456} In COHRE interviews, it emerged that women did not see the merit of going to court as this would most likely bring dishonour upon the family. (See further, Subsection 3.5.4, below.)

She wondered if she could ask for her inheritance, though she thought to do so would be shameful. She does not want to go to Court.\textsuperscript{457}

For the woman claimant, a court claim for inheritance can and often does result in ostracism. The idea that courts are troublesome seems to stem not so much from negative experiences in court but mainly from the fact that women who go so far as to claim their inheritance in that way are ostracised – not only from the family but also from the wider community – for being ‘too demanding’.

Finally, the cost of going to court is a barrier. Especially for women from rural areas, the cost alone of travelling to court can be an insurmountable obstacle to seeking justice. The cost of legal representation is even more prohibitive. None of the States examined in this report provide national programmes of legal aid for women.

For lower-class women, interrelated illiteracy and poverty constitute a serious obstacle to their access to justice.

3.3.3 Lack of legal remedy as a violation of human rights

Lack of effective legal remedy is a clear violation of human rights that needs to be urgently addressed. States Parties to the International Covenant on Civil and Political Rights are obligated:

To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.\textsuperscript{458}

The Arab Charter on Human Rights\textsuperscript{459} also obligates States Parties to ensure that an effective remedy is available for all, for violations of all rights as set forth in the Charter.

Yet MENA States continue to ignore such obligations, especially with respect to matters of personal status as they affect women. As this subsection (3.3) has shown, the courts are generally neither receptive nor favourable to women, and women are either not able to access them or are justifiably unwilling to attempt to do so, or are impeded by a lack of legal knowledge and by prohibitive costs.

It is therefore of the utmost importance that judges and court personnel, especially those in the religious courts, be put through gender-sensitivity programmes. Women must be made aware of their rights through legal education, and legal aid should be provided whenever necessary to allow women to take cases to court. (See further, Section 6, Recommendations.)

\textsuperscript{457} COHRE interview with women at Madaba Community Centre, Jordan, Sept. 2004.
\textsuperscript{458} ICCPR (see n. 8 above), Art. 2, para. 3(a), http://www.unhchr.ch/html/menu3/b/a_ccpr.htm
3.4 POLITICAL DISEMPOWERMENT

Women in the Middle East and North Africa are often regarded as and even termed ‘second class citizens’; they are denied their rights to participate as full agents in their own personal life and in the development of their community and nation. Women are prevented from accessing the court system, from serving as judges, from travelling without their husband’s permission, and from passing their nationality to their children. Their autonomy and their individual rights are violated through patriarchal systems of ‘male maintenance’, bride price, and denial of legal custody over children. All these constraints on women’s freedom are culturally imposed and codified into laws ostensibly based on religious principles.

Even in cases where the law has changed to accord women more rights, women can still be prevented from fully realizing their rights. These conditions increase the dependency of women on men in economic, social and legal matters and reinforce the values of patriarchy that privilege men over women.

3.4.1 Lack of equal nationality rights

The nationality laws of all but two of the States examined in Section 2 of this report deny women an equal right with men to transmit their nationality to their spouse. Furthermore, only fathers, not mothers, can independently pass citizenship to their children. In many cases where a woman has been widowed, divorced or abandoned, or if her husband is not a national of her country, in which they reside, her children have no access to citizenship and are thus excluded from the rights of a citizen. These rights include access to such basic services as education and healthcare, and to land ownership and inheritance. This is yet another manifestation of what Suad Joseph calls “the privileging of masculine blood”.

RULING OF THE UN HUMAN RIGHTS COMMITTEE

In 1978, the Committee ruled on this issue in the context of Mauritius. Non-Mauritian men married to Mauritian women were under threat of deportation. As the law did not allow Mauritian women to transmit their nationality to their husbands, the latter could only remain in Mauritius illegally. However, Mauritian law did permit Mauritian men to pass their nationality to their wives.

Pursuant to Article 17 of the International Covenant on Civil and Political Rights (ICCPR), nationality rights are to be granted equally to all men and women. Twenty Mauritian women brought this issue before the UN Human Rights Committee (the body which oversees the implementation of the ICCPR). In its ruling, the Committee required that Mauritius amend its laws to guarantee women the same rights to non-interference and continuity of family life (for example, transfer of nationality) as men enjoy:

“In the present cases, not only the future possibility of deportation, but the existing precarious residence situation of foreign husbands in Mauritius represents, in the opinion of the Committee, an interference by the authorities of the State party with the family life of the Mauritian wives and their husbands. The statutes in question have rendered it uncertain for the families concerned whether and for how long it will be possible for them to continue their family life by residing together in Mauritius.”
States are thus obligated by international law to ensure that nationality is conferred equally upon women and men, and that it is transferable equally from women and men to their children. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) explicitly requires that States confer equal nationality rights upon women and men, allowing women equal right with men to acquire, change or retain their nationality.

As this is such an important and deep-seated issue, the way in which women experience nationality laws is highly indicative of the level of respect for women’s rights in general. As evident in the country reports of Section 2, and as observed by the COHRE WHRP during its fact-finding mission to MENA States, nationality issues normally play out negatively for women. The nationality of a woman counts for less than that of a man — it cannot be conferred on her spouse or on her child.

This has implications for inheritance and ownership of housing and land, particularly because such property is normally owned in the name of the head of the household — almost always a male. If a female national and a male non-national marry, their ownership may be precarious in a system that only permits legal ownership by nationals.

One of the States visited during the COHRE fact-finding mission, Kuwait, provides a poignant example of denial of women’s citizenship rights. When a Kuwaiti woman marries a non-Kuwaiti man, she is effectively stripped of her rights to housing, land and inheritance, among other rights. This applies to the couple’s children as well, for nationality passes exclusively through the father. Therefore, the children will be whatever nationality the father is. In Kuwait, non-nationals are denied their basic rights to housing, education and equal employment. In fact, no laws that apply to Kuwaitis apply to non-Kuwaitis residing in the country, unless very specific criteria are met. (This, even though over half of the nearly two million persons residing in Kuwait are non-national.)

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*http://www.un.org/womenwatch/daw/cedaw/text/eConvention.htm#article9*
NON-KUWAITIS: DENIAL OF RIGHTS

Kuwait is an Islamic state. Eight-five percent of its population is Muslim, and 70 percent of them adhere to the Sunni tradition.\textsuperscript{467} Given the dominance of this tradition and the Maliki school of jurisprudence, the Government of Kuwait based its 1984 Kuwaiti Code of Personal Status on the Maliki interpretation of the Shari’a. The Code governs issues of family law such as marriage, divorce and inheritance.

Kuwaiti legislation on both housing and inheritance is only applicable to Kuwaiti citizens. Partly because of its national wealth, the Government has a relatively generous housing policy dedicated to providing housing to Kuwaiti families. This objective, however, excludes all non-Kuwaitis and all unmarried Kuwaitis (both men and women), as well as Kuwaiti women married to non-Kuwaiti men.

A family is not considered Kuwaiti if the head of household – by law, always a male – is non-Kuwaiti. The nationality of the children is determined through the male only.

The housing scheme therefore excludes female-headed households, especially those without children, from benefiting from the national housing programme.

“Housing is an issue for single people — no housing allowance if you are not married or if you are divorced without children.”\textsuperscript{468}

As women cannot apply for Government-funded housing on their own, and the title of their family’s house or property always belongs to a male relative, they are unlikely ever to inherit such a house even if they have contributed to its acquirement and maintenance. Only if a man, before his death, explicitly transfers the title of the house to his wife, daughter or other female relative will she be adequately protected after his death.\textsuperscript{469}

Recognising this problem, the Government has begun providing socially funded apartment blocks built specifically for “divorcees, widows and spinsters”.\textsuperscript{470}

“The National Assembly is trying to protect women’s rights, as she is weaker — we must empower women to be protected, that is why we try to give them housing when their husbands eject them.”\textsuperscript{471}

This scheme is discriminatory in effect, for women are forced to move into this housing — or be left without accommodation. Women in such housing, especially divorced women, are stigmatised by society. Although women are allowed to live in the housing for their lifetime, they are not given any title to it and therefore cannot benefit from the housing in terms of securing bank loans or other investment. In addition, they cannot bequeath the housing to heirs.

“Women have rights in Kuwait but only as a daughter or wife — and that only if they are Kuwaiti.”\textsuperscript{472}

\textsuperscript{468} COHRE interview with Kuwait Bar Association, Oct. 2004.
\textsuperscript{470} COHRE interview with Kuwait’s Housing Minister, Oct. 2004.
\textsuperscript{471} Ibid.
\textsuperscript{472} COHRE interview with Women’s Cultural and Social Society, Kuwait, Oct. 2004.
This is in contravention of the Arab Charter on Human Rights, which clearly states that nationality is a right for all. Under Article 29, all States are to allow a child to acquire the nationality of its mother, in accordance with the ‘best interests of the child’ principle. Under the present systems in Kuwait and other MENA States, children are denied not only their rights of citizenship but, as a result, their basic human rights.

Although the situation for women in MENA States has improved in certain important areas such as political participation, women are still not accorded full citizenship rights: in almost all MENA States, a woman is not allowed to pass her citizenship to her husband and children, though men do have full citizenship rights.

There is a perceived tension between women’s human rights and their familial obligations, with the latter normally overriding the former. Indeed, the inferior citizenship rights of women – a State denial of women’s human rights – may be seen as an indication and/or result of their subordination within the family, which has serious implications for inheritance and other matters of personal status.

A FAMILIAL HIERARCHY

It is often unclear whether the relationship between nationality rights and women’s overall subservient position in MENA States is consequential or causal.

“The family encodes the social role of women, their citizenship duties, their relationship to the nation.”

It is often said that a country is like a family, with the nation – the element to be protected – as the mother, and the State – the bearer of authority – as the father. This is indicative of the hierarchical family order that is the very cornerstone of traditionalist thinking. The system of personal status codes based on the Shari’a that are predominant in MENA States today supports this patriarchal system.

3.4.2 Lack of political will

Responsible leadership that takes women’s human rights seriously has the political will to bring about change. Unfortunately, in too many cases, such will is lacking, as those in power shy away from controversies related to upholding women’s human rights. This is particularly true in the MENA region, where women’s rights are often seen to conflict with traditional notions or religious teachings. Women’s rights are often mistakenly condemned as ‘anti-family’ or ‘anti-religion’, when, in fact, open discussion on such rights and the implementation of measures to protect them is necessary to reflect social realities.

Male leaders, in particular, be they community members, religious leaders or legislative representatives, may be hesitant to challenge and change a socio-legal structure that effectively benefits their gender status.

In its research and fact-finding mission, the COHRE Women and Housing Rights Programme (WHRP) found several instances of community and religious leaders perpetuating systems of discrimination against women. For example, several religious teachers in communities visited by the WHRP practise polygamy, even though they preach against it.

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473 Among the States examined in Section 2, above, Turkey was the first to grant women the right to participate in elections and to be elected to public office; this happened as early as in 1934. These rights were not recognised in Kuwait until 2005.
476 For the use of these images in the Turkish nationalist discourse and ideology, see ibid., p. 157.
One woman told COHRE:

Sheikhs preach about inheritance rights but are often the first to deny inheritance rights. These people will interpret whatever they want into Islam or from it. They will justify what they want: they will make *muhalal* [allowed] what is actually *haram* [forbidden].

Actions and words that are discriminatory are particularly dangerous when coming from religious leaders, especially in a culture and society where religion is so pervasive and religious leaders so revered. Religious leaders are often seen as infallible — and their actions and deeds are considered guidance to be emulated. It is therefore very important that such leaders be sensitised to women’s rights and act in a way that shows respect for such rights.

### 3.4.2.1 Failure of political modernisation

The modernisation of several MENA States carried with it messages of women’s empowerment, being a “symbolic evocation of a new nation.” However, the apparent progress achieved in the status of women was a glossy mirage rather than real change in the deeply rooted social patterns of gender relations. In fact, those modernising governments actively prevented the development of independent women’s movements:

Reformist legislation affecting women was frequently sponsored by authoritarian and ‘dirigiste’ regimes whose ultimate aim was not to increase the autonomy of individual women, but to harness them more effectively to national developmental goals. Typically, women’s independent attempts at political organization were actively discouraged and considered divisive.

In several cases (for example, Iran and Tunisia), when the authoritarian regimes that in some respects had ‘supported’ women’s human rights were weakened or overthrown, giving way to conservative, fundamentalist political forces, the rights that women had gained became the first casualties of the political upheavals. Either those women’s rights were sacrificed by the weakened forces in power as concessions to emerging conservative social and political forces, or they were revoked by the new forces that had just come to power.

Clearly, women’s rights were being used for political gain, as a means to gain political favour from women. Even today, States that ostensibly support women’s rights are not implementing the legislation to promote gender equality and non-discrimination that they are obligated to implement by the international human rights instruments to which they have signed up. States cannot be relied on to protect women’s rights. Political will to truly address women’s rights – for reasons other than political gain – must increase.

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TRADITIONALIST POLITICS AND NEGATIVE IMPACTS ON WOMEN

There are many accounts of the dire consequences for women’s social and political rights when a traditionalist religious system triumphs politically. The following is an illustrative example:

“After the 1979 revolution in Iran, the Islamist regime began to enforce women’s seclusion. In 1980, veiling or ‘hejab’ was made compulsory by law. The Ministry of Education banned sex-integrated schools. Further, child care centres were closed down, effectively eliminating women’s public employment. The new government also made a woman’s right to work conditional on gaining the permission of her husband.”

Fundamentalist political movements in the MENA region, far from having lost momentum, are fiercely resisting all reforms that promote the status of women:

“In Egypt, the people’s representatives wished to block women’s right to divorce and women’s freedom of movement. In Kuwait, the liberals have been voted out of a freely elected legislative body. In Morocco, despite the unanimous vote for the new family code, the opposition is challenging its legitimacy in terms of Shari’ah and jurisprudence.”

In any society or religion, fundamentalist or traditionalist tendencies often look to ideologies that have negative ramifications for women’s rights. In some respects, the traditional ideologies of family can be seen in a positive light. However, the women’s rights movement opposes the hierarchical and patriarchal structures that such ideologies espouse – with the man as head of household and women in subordinate economic, social and political roles – because they are not in line with a human rights perspective.

Traditionalist ideologies and practices make the attainment of women’s independent rights to housing, land and inheritance particularly difficult.

3.4.3 Failures of State mechanisms to protect women

The apathy of political authorities in many States around the world, be it due to corruption, ineptitude or simply because ‘women’s issues’ are inevitably given low priority in public policy, is a major reason why so many women continue to face an uphill struggle with regard to enjoying their inheritance rights. Politicians give a multitude of reasons to excuse their own lack of leadership in this area; they cite the predominant ‘culture’, traditional norms, or the lack of resources; in some cases, they even blame women themselves for not fighting hard enough for their rights.

As Section 2 illustrated, and as the COHRE WHRP found during its fact-finding mission, the States with women’s ministries are indeed one step ahead and on the right path towards women’s rights. Gender equality, however, is still a long way off, and it was clear in discussions with some of the ministries that equality is not even a goal at this stage. For the most part, women’s ministries are busy addressing issues related to violence against women, civil rights of women (such as the right to vote) and, to some extent, economic empowerment. Economic, social and cultural rights for women are still far off the agenda.

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Specialised ministries need support and the cooperation of all State bodies. However, specialised agencies cannot be the only solution: ultimately all political bodies must integrate a gender-focused and gender-sensitive framework and themselves join the fight for women’s human rights. A department or agency, standing alone, will not suffice to bring into motion the often stagnant and deeply patriarchal political machinery that runs most of the world’s governments. This is true for all governments, not only in the MENA region.

Scores of international human rights instruments, not only CEDAW, obligate States to create special departments and integrate women’s issues at all levels of government. It is time for this obligation to be transformed into reality, not only in the MENA region but throughout the world.

3.5 SOCIO-CULTURAL OBSTACLES

As illustrated in Subsections 3.1 to 3.3, above, the plural legal systems of States in the Middle East and North Africa (MENA) region affect the situation of women’s rights to housing, land and, in particular, inheritance in highly complex ways. The inheritance rights situation is further complicated and confused by the influence of a web of societal relations and cultural norms.

3.5.1 Abuse of laws

Religion teaches values and good treatment and can be considered the basis of human rights. Today, however, religion is often used as an excuse, a justification for other negative things. We must get back to the true meaning of religion.

As many women told the COHRE Women and Housing Rights Programme (WHRP) during its fact-finding mission, male relatives often use Islam and the Shari’a as a pretext to persuade them to renounce their inheritance rights.

This misuse is giving the religion and the laws derived from it a bad name. Many Muslims strongly believe that Islam and the Shari’a are – or should be – an infallible system. This belief is often exploited, and the religion and its teachings perverted, to serve negative purposes such as self-interest and the oppression of others.

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**COHRE interview with Nawaal Fouri, leading Islamic scholar and expert, Madaba, Jordan, Sept. 2004.**

TALES OF TRICKERY

During its fact-finding mission to Tunisia, Kuwait, Jordan and Turkey, the WHRP heard many women testify to men’s trickery to deny women their inheritance share. The following are just a few illustrative examples from Jordan:

“Two brothers were caught having exhumed the body of their deceased father, in order to obtain his fingerprint on a will they had forged, which bequeathed to them the one-third share of the estate that is allowed to be willed away.”

“Six months after the father died, the son beat up his widowed mother and his sister to keep them from claiming their rights. The sister gave up her share to him; in total, 7000 [Jordanian] dinars [nearly US$ 10 000]. ‘It is ironic,’ another woman said, ‘as he works at the Ministry of Social Welfare’. Apparently, while beating the women, in front of several witnesses, he shouted at his mother: ‘You are an old woman and do not need money.’ And at his sister: ‘You do not need this money, you should not get anything.’ No one could tell us what happened to the man.”

“There are many methods of tricking women to give up their inheritance rights. Only a fingerprint used to be required on a will, but now a signature is needed; so it’s a bit harder to obtain, as more force is needed, but men still trick their fathers to get property. Women are left to be beggars.”

“We have the laws, but how are they applied? It is not religious to take elderly people and beat them up to receive their inheritance.”

“My mother gave up her inheritance but she does not like to talk about it. She was tricked into giving it up. I know she was told that her brothers would pay for her to go to Mecca, but they never even let her go, let alone paid for her to go.”

“Police do not act on trickery or even violence (unless the woman insists on making a claim against the perpetrator), even when they know about the violence and the illegal tricks. They don’t care.”

Similar methods are used in other MENA States to subvert, or at least circumvent, the law and deprive women of their inheritance rights.

One method, historically institutionalised and frequently used in North Africa, most notably in Morocco and Tunisia, is the founding of an endowment – waqf or habous – with male descendants as exclusive beneficiaries. Generally, the father founds such an endowment before his death, to ensure that his female descendants, when married, can neither dispose of the property nor benefit from it. Thus, the family wealth is kept in the hands of men and no part of it is transferred to married daughters or their children. On rare occasions, single females may be included in an endowment; however, they must meet stringent conditions before they can receive their share.

Since the Shari’a places no restriction on the making of gifts during the lifetime of the giver, this is a convenient method to reduce the estate to be transferred to heirs following the owner’s death. This method can be used to benefit female family members and thus compensate them for the disadvantage they normally suffer when the inheritance laws are applied. However, the same method can – and often is – used to the detriment of women and girls, the father giving his entire estate to his sons before his death in order to ‘keep it in the family,’ thereby circumventing the normal application of the inheritance laws.

Turkey provides a poignant example of abuse. Even though the law embodies the principle of gender equality in inheritance, males often discriminate against female family members when it comes to sharing out the estate, citing as justification the Shari’a rules on inheritance (which are inapplicable in Turkey):

Families employ various strategies in order to prevent the equal distribution of the inheritance between their daughters and sons as required by the Civil Code. For instance, the father transfers all his wealth to one or more of his sons while he is still alive so as to prevent his daughters from getting a share of the inheritance. Another common practice is to pressure female children to waive their rights to the inheritance through a declaration approved by a notary. In fact, 30.1 % of the women whose mother or father had died reported that they had been made to waive their rights to inheritance.484

ATTEMPTS TO USE LEGAL LOOPHOLES TO THE ADVANTAGE OF WOMEN

The loopholes in the personal status codes, though often used negatively, can and sometimes are used in attempts to assist women. During its fact-finding mission, the COHRE Women and Housing Rights Programme (WHRP) heard of some instances of property being divided before death to protect women.

For example, a Turkish woman told the WHRP that her parents wanted to divide their property between her and her brother before their death. However, she revealed that her parents feared a reprisal from her brother, on whom they relied for physical labour on their farm. Her parents feared that if they gave their daughter her share now, he would get angry and refuse to continue helping them.485

This fear of reprisal from sons is a strong deterrent to dividing the estate before death to benefit daughters.

3.5.2 Culture of control

As has been evident throughout this publication, in MENA States all aspects of family life, including inheritance and other personal status issues, are based on a patriarchal system. A woman or girl is not considered an individual in her own right; she is always a male’s wife, daughter or sister, and usually realises any rights she may have only insofar as her relation to a male permits.

This patriarchal system is deeply entrenched in every aspect of society, including citizenship and political affairs.486 In many MENA States, a woman must register her four-fold name, which consists of her given name, her father’s name, her grandfather’s name and the family name, in order to obtain an identification card or a passport. In several States, a woman still needs the permission of her father or male guardian to obtain a passport or travel visa. In many cases, she may not leave the country if her husband, or father (if she is unmarried), does not give her written permission to travel.

This culture of control translates into a plethora of double standards: women are constrained in their actions, whereas men are to a great extent free to act and do as they wish. The burden of propriety and adherence to religious values and morality is placed disproportionately on women.

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484 See Subsection 2.8, Turkey, above.
Furthermore, any useful roles that women play in society at large tend to be downplayed. Only their roles in the household and the family are acknowledged, and still only in a limited way. Women are not encouraged to have a voice in society, and are not seen as having an independent role to play in it. Although there has been change for the good in certain areas, and women have gained some political and economic power, they are still regarded as ‘second-class citizens.’

In the private sphere, men can indulge in premarital sexual relations without fear of societal reprimand; however, women who have ventured beyond the bounds of ‘acceptable’ behaviour and ‘shamed’ their families face not only society’s vehement disapproval but physical violence or even murder.

This control debilitates women. Often tacit, it is still deeply ingrained in the culture of almost all MENA States and entails a denial of women’s most basic rights. Men in all societies have a privileged role and the idea of women’s equality threatens this privilege, which is why men resist equality.

Not only do laws need to change to provide for gender equality and less control of women by men, but men themselves need to be sensitised to the inequalities and injustices, and must work together with women to change a system that is depriving women of autonomy and basic human rights.

3.5.2.1 Family allegiances

In the MENA region, as has been evident in many instances in Section 2 and this section, the culture of control extends to the familial and domestic level, where the impacts on women are often severe. Women and men have distinct roles in the family, women’s role being one of deference and obedience, and men’s one of household head and decision-maker.

Hierarchical family systems, in which men may assume ultimate power and exert total control, can be extremely detrimental to women, excluding them from household decision-making and thus effectively denying them an important element of their right to adequate housing. There may also be a huge impact on other fundamental human rights of women, such as their right to health, as articulated in CEDAW. Often, the power and control that men wield over the family is taken as justification for domestic violence. A particularly egregious example of this kind of thinking is the fact that courts often hand down mitigated sentences for so-called ‘honour crimes’, where women are killed by male relatives to protect the ‘family honour’.

Marriage puts the woman in an ambivalent position in terms of family allegiance and support. The bride leaves her father’s family to join that of her husband. Although her links with the natal family may remain, their significance is mainly emotional and affective. Such links are generally regarded as secondary to her allegiance to her conjugal family: in theory, at least, the paramount duty of a married woman is to serve the interests of her husband’s family. This double allegiance may be a handicap for the married woman, who is caught between conflicting loyalties. On the positive side, this situation may provide her with two sources of support and, in some cases, she may strategically resort to one in order to strengthen her position against the other.

Two important international human rights instruments, the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), stipulate that equality within the family, and especially between spouses, is a fundamental human right. Indeed, in international law such equality is considered to be vital to the proper functioning of the family. As clarified by the UN Human Rights Committee in its General Comment No. 28 in relation to the ICCPR, men and women are granted specific equality within marriage.

\footnote{For example, the Jordanian Penal Code has a leniency clause for any crime committed in a ‘fit of fury’, which is often applied to so-called ‘honour killings’. See Subsection 2.3.6.3, above.}

\footnote{UN Human Rights Committee, General Comment No. 28: ‘Equality of rights between men and women’ (art. 3 [of the ICCPR, see n. 8 above], CCPR/C/21/Add.10, adopted by the Committee at its 183\textsuperscript{rd} meeting (sixty-eight session), on 29 Mar. 2000, http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/13b02761220d4f818802968890036080f?OpenDocument}
3.5.3 Customs and traditions

“Oppression of women is simple, when religion and culture meet.”

Many activists and women’s rights experts in the MENA region claim that the problems related to women’s inheritance rights are not rooted in the law; they blame customs and traditions for preventing women from realising their rights. Many activists and women’s rights experts in the MENA region claim that the problems related to women’s inheritance rights are not rooted in the law; they blame customs and traditions for preventing women from realising their rights.

We know there are human rights, but they are difficult to access due to social control, psychological factors, cultural traditions, etc. that get in the way. There is a certain conditioning needed to change social structures: society does not provide opportunity for change.

Tradition tells women that they must submit to their brothers. Their brothers have a larger role to play in financially supporting others. Even if they are working themselves, women are made to feel that it is not part of their culture for women to ‘get’ anything — they should just give it up.

The law is fine; it is culture that needs to change.

During COHRE’s fact-finding mission, women themselves told the WHRP that they believed that, in accordance with tradition, they should not demand their inheritance rights but relinquish their share in favour of their brothers or uncles. Women were assured that their male relatives would financially support them and their families, as tradition required. For some, the ‘choice’ was clear: they were convinced that a lifetime of maintenance and care would be far more beneficial than the share of housing and land they might claim when a male in the family died. Sadly, that belief often proves to be in vain, and many women are left neither with their rightful share of inheritance nor the anticipated ‘lifetime of care’.

Another cultural norm used to deny women their inheritance rights is the attitude that once a woman or girl has married outside the family she should no longer be entitled to her inheritance share. If a woman marries into a ‘strange’ family, her brothers and uncles fear that their family wealth will benefit those ‘outsiders’ rather than their own kin. They convince the woman that her husband will take her property away from her to benefit himself and his family. Thus, again, a woman is coerced by her family to relinquish her rightful inheritance.

3.5.4 Stigma and shame

Societal shame is stronger than religion.

Many societies in the MENA region are based on a strictly upheld code of honour, sharaf, which works to justify the patriarchal system that prescribes one set of values and behaviours for men and a very different set for women. This code of honour is closely related to notions of tribal affiliation or kinship, and demands that women act in a chaste, obedient and subservient manner, while men control family and kin. Instilled in women and girls is a great fear of dishonouring oneself or, more importantly, one’s family or kinship group. This fear powerfully constrains their behaviour and helps to maintain the patriarchal hierarchy. Women are effectively bound by a ‘culture of shame’: concerns about honour prevent many women from finishing school, entering higher education, playing sports, participating in social and commercial activities, working, driving a car and travelling.

490 For example: Soukaina Barouri, Director of the Tunis-based Centre for Arab Women’s Training and Research (CAWTAR); the Jordanian Fadia Faki, a well-known women’s rights researcher and author; and Nawaal Fouri, a religious expert and member of the Jordanian Parliament.
492 This sentiment was clearly and repeatedly expressed by women in all four countries (Jordan, Kuwait, Tunisia and Turkey) that the WHRP visited during its fact-finding mission.
493 See n. 489 above.
In the case of several MENA States – for example, Egypt (see Subsection 2.1.1.2, above) and Jordan (see Subsection 2.3.2.2.1, above) – the honour of the family, the tribe and the community largely hinges on the conduct of its women. If they do not conduct themselves as required, they are considered shameful, ayib. This term implies societal shame, but not sacrilege.

Women’s entire lives are often built around ayib, a shamefulness that comes from society, but is cloaked in religion. Thus, the concept of ayib is a powerful inhibiting force that is largely derived from the culture of control described in Subsection 3.5.2, above. It is mainly used to ‘protect’ women’s honour — and thereby the honour of the family or kinship group.

Haram, on the other hand, is applied to whatever violates the dictates of Islamic teachings and codes and is so shameful that it is considered to be sacrilegious. This is an even more powerful concept, with grave ramifications for women. Historically and traditionally, the system of haram has been used to keep women firmly ‘in their place’.

As women’s inheritance rights are clearly defined under the Shari’a, claiming such rights should not be considered haram. Nevertheless, many women are made to believe that demanding their inheritance share, or maintenance from their husband or male family members, is indeed haram. Clearly, however, this mistaken belief is a product not of religion or the law, but of culture — the culture of control. Women are made to feel ashamed and are accused of going against their divinely prescribed role in the family and the broader community. In patriarchal systems, those in power can easily propagate the idea that any woman who claims her rights is shameful and sacrilegious.

HONOUR CRIMES

So-called ‘honour crimes’ are a particularly grievous manifestation of the gender-based discrimination that is deeply embedded in customs, traditions and social values. These are crimes in the name of family ‘honour’, committed against women out of retribution for their alleged misdeeds, to ‘wash away the shame cast upon the family’.

The killing of sisters by their brothers in order to take the sisters’ inheritance share is an honour crime that is well documented, especially in Jordan and Turkey. Generally, though, there is a serious shortage of statistics on honour crimes, and those that are available do not show the full picture. A 1999 publication by Nasser et al., on demographic characteristics of both victims and perpetrators of violence against women in Jordan, found that honour crimes account for one third of all violent crime in Jordan, although official figures from the national Department of Statistics indicate that such crimes accounted for only 15 of the 125 murders in the country in 2002. It is very difficult to collect data on such crimes, as they are surrounded by great secrecy and the fear of reprisals is strong. Several experts, including Fadia Faqir, a respected Jordanian researcher on violence against women, suggest that women are often forced to commit suicide as an indirect way of carrying out an honour killing. Sometimes, the police or even the victim’s family fraudulently register an honour killing with another cause of death; for example, accidental death or suicide.

Honour crimes usually carry lower penalties than other violent crimes. In a significant proportion of cases the sentence is mitigated (or even commuted). For example, Section 98 of the Jordanian Penal Code mitigates punishment for crimes committed in a ‘fit of fury’ and is often successfully invoked in cases of honour crime. In one case in Jordan, reported in the 2004 UNIFEM report, Progress of Arab Women, two brothers, after several attempts, succeeded in killing their sister. Even though

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498 Nasser et al. (n. 157 above); Jordanian Department of Statistics (n. 150 above).
499 Several publications explore the topic of honour killings. See, for example, Fadia Faqir (n. 154 above).
they were charged with pre-meditated murder, their sentence was mitigated to six months’ jail after it emerged that she had admitted to having a pre-marital affair. Their crime was accepted as having occurred in a ‘fit of fury’ to ‘save the family’s honour’.

The misuse of the concept of honour crime for self-interest has been widely documented. It is not uncommon for a man to kill a woman purely for financial gain, or to conceal other crimes, and then to claim that the killing was in the name of the family’s honour.

3.5.5 Tribe and family

Many historians have claimed that Islamic inheritance rules constituted a great challenge to the social organisation and order that prevailed in Arabia at the beginning of the Islamic era, which has been described as follows:

... patrilineal in its structure and patriarchal in its ethos; individual tribes were formed of adult males who traced their descent from a common ancestor through exclusively male links. The tribe was bound by the body of unwritten rules that had evolved as a manifestation of its spirit and character. These rules served to consolidate the tribe’s military strength and to preserve its patrimony by limiting inheritance rights to the male patrilineal relatives (‘asaba) of the deceased, arranged in a hierarchical order, with sons and their descendants being first in order of priority.\textsuperscript{500}

The tribal system was and continues to be very pervasive, especially in those Arab nations that came first to independent statehood, such as Jordan and Egypt. Bedouin tribes live throughout the Middle East and, although only a small part of the total population, have greatly influenced its political and social evolution. Historically, tribalism was very important, largely because of the need to cooperate and interdepend in order to survive in a harsh, desert environment. Today, the tribal mentality is manifest in the extended family or kinship system.

From an analytical viewpoint it may be argued that the tribe and the family – especially in the sense of the nuclear family – are distinct sources of social identity. However, in most societies in the MENA region there is no clear distinction between tribe and family: tribes have features in common with extended patriarchal families,\textsuperscript{501} and both structures embody a sense of collective identity that, according to tradition, is best represented and perpetuated through patrilineal descent.\textsuperscript{502}

It is in inheritance that blood and marriage ties are given priority over other forms of relation or ‘closeness’, for it is generally seen as essential to ‘keep the wealth in the family’. Women who marry outside their extended natal family give birth to children who technically belong to another agnate group. Thus, giving them a share of the family estate would amount to passing that share to ‘strangers’ and creating common economic interests with them: “Women as heirs alienate property from the agnatic group by passing it to the husband and his children”.\textsuperscript{503}

Clearly, in either tribe or family, where a notion of collective identity based on patriarchy prevails, individual rights of women are subordinated to male members who are vested with the capacity of perpetuating the family.\textsuperscript{504} It is this concept of perpetuating or maintaining the family that often leads to the denial of women’s rights to own and control property, as well as to inherit.

\textsuperscript{500} Powlos (n. 430 above), p. 11, quoting Noel J. Coulson, who was a prominent Western expert on the history of Islamic law.


\textsuperscript{502} Ibid., p. 150.

\textsuperscript{503} Erika Loeffler-Friedl, ‘Inheritance: Contemporary Practice, Iran and Afghanistan’ in Encyclopedia of Women and Islamic Cultures (n. 456 above) p. 302.

\textsuperscript{504} Ibid., p. 153.
Men are perceived as having a unique family identity that never changes in their lifetime; they are the bearers of this identity and they transmit it to their descendants. Women are perceived as having a less clearly defined and potentially shifting family identity. Marriage is the horizon on which every girl should properly set her sights: “Unmarried women are pitied and considered social and familial failures in many communities.”

In Turkey, for example, the COHRE WHRP found that, despite the secular laws that prescribe equal inheritance rights, women were often told that they should not claim their share of inheritance as they would be leaving the family when they married. They should not take property away from the family. Why should I claim my rights? I am seen as only a stranger in my house until the time I marry. Then I will be gone, and take my property with me ... this is unacceptable to my father and even to my mother. They have already convinced me to leave my share of inheritance to my brother — he will better keep it in the family.

In such cases, when women try to claim their share they are quickly warned that they will be ostracised by their families and will thus lose the support and love of their brothers, uncles and other male family members. As family bonds are very strong throughout the MENA region and are often women’s only source of protection, anything that threatens those bonds is seen as a serious threat to women. Family pressure to allow the male relatives to claim the entire inheritance often outweighs the woman’s desire or ability to claim her rights.

**THE ‘GENDER PACT’**

According to UNIFEM’s *Progress of Arab Women* (2004) report: “... laws, practices, beliefs, and biases detract from women’s social citizenship in the name of the preservation of the family unit.”

Women in the MENA region, says the report, rationalise gender inequality and tend to accept control, a measure of submission, and even a modicum of violence in the name of family survival and tranquillity. Women and children must conform to the wishes and needs of men within the family; in return, they are ‘protected and supported’ by elder males. The roles of men and women within the family are determined by a specific ideology that sets out rights and obligations for both sexes.

UNIFEM refers to this arrangement as the ‘gender pact’, whereby those persons who are perceived as needful of social protection gain such protection through a pre-negotiated familial ideology. Men are privileged with power, but only because they are bound to shoulder a moral and material responsibility for their women and children. This arrangement can be destabilised by poverty, male unemployment, marital breakdown, and other social and familial problems, according to UNIFEM.

### 3.5.5.1 The economics of the kinship system

The patriarchal kinship system that prevails today in the MENA region downgrades and downplays the active role of female family members, at least as far as the financial and economic aspects of family life are concerned. This system is upheld by “cultural principles that shape and inform possible conduct”, as well as by the law. This still holds true today, even though women are playing increasingly active roles in financially supporting their families as they acquire higher education and enter the job market. As discussed in Subsection 3.1.2, above, and as illustrated throughout Section 2, women’s economic contribution to the household is often not recognised within the family, and especially not in the law.

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508 Ibid., p. 130.
This denial of women's active economic role within the family is closely tied to the attempt to justify the denial of their right to a share of the family wealth. Why should they be allowed to share in that to which they do not materially contribute? Males, on the other hand, are regarded as having every right to dispose of the family's material resources as they see fit, because they are the breadwinners and the bearers and transmitters of the family's name, social standing and identity.

**THE HARSH REALITY**

During its fact-finding mission to Tunisia, Turkey, Jordan and Kuwait, the COHRE WHRP often heard that women do not need to inherit because it is not their responsibility to financially maintain the family. Yet in the current bleak economic situation the reality is that many women must work to bring in enough money to sustain the family. Women's rights activists argue that personal status codes and laws must be amended to reflect this reality. (See further, Section 5, Strategies and solutions, below.)

Where the organisation of family life is dictated by such patriarchal ideologies, women are expected to forego their right to inheritance in favour of their male relatives: their brother(s) when the legacy is from the natal family; their son(s) when it is from the husband.

Despite the negative implications, in some circumstances this may be a strategically wise move for women. In societies where “family is still relied upon to secure the well-being of individuals, particularly in times of crises, need and insecurity”\(^ {509} \) and where it is genuinely “the vehicle that guarantees survival and continuity”,\(^ {510} \) this is a logical decision, especially when the property in question has no great value and when the women do not have the social and economic skills to take advantage of such a resource. As stated in Subsection 3.5.5, above, in the long run the familial support may prove more valuable to women than their share of the estate — especially from the perspective of family politics. For example, the support of brothers enhances women's position vis-à-vis their husbands.\(^ {511} \) When no close male relatives exist, for example in a family without sons, it is more acceptable for a daughter to claim her inheritance rights. However, even in such cases daughters often receive less than their legal share.\(^ {512} \) This indicates another determining factor in the actual realisation of women's inheritance rights: whether there are competing heirs and, if so, how they are related to the woman in question.

In this context, any right to inheritance a woman may have under personal status or family law is, in reality, nothing more than a bargaining chip in her dealings with her male relatives. In effect, she can barter that right for an undertaking on the part of her male relatives to provide support in times of need. Rarely can she benefit from that right as she was supposed to do, namely directly, financially and independently.

Some have suggested that legally enforcing male maintenance of female relatives is a way forward, at least a means of protecting women from destitution after their husband or father dies and they are deprived of their inheritance share. (See further, Section 5, Strategies and solutions, below.)

\(^{509}\) Ibid., p. 122.

\(^{510}\) Ibid., p. 125. The following passage of *Progress of Arab Women* (2004) underlines the paramount importance of the family as a source of well-being in the Arab countries: “Palestinians in their diaspora thrive because of family and similar mutual support mechanisms. The rural poor all over the Arab world survive thanks to familial ethics and modes of production and consumption... The working members of the family have often cared for the unemployed and migrants continue to invest in their home communities through the repatriation of remittances. But Arab families have gone through a demographic and social upheaval...”\(^ {511} \)

\(^{511}\) Annelies Moors, ‘Inheritance: Contemporary Practice, Arab States’ in *Encyclopedia of Women and Islamic Cultures* (n. 456 above), p. 300.

\(^{512}\) Ibid. Moors observed this practice in Nablus in the late 20th century, though it is not particular to that location.
3.6 POVERTY

On the whole, in recent decades the MENA region has suffered from slow economic growth and mounting economic difficulties. This has lead to the deterioration of living standards, a rise in unemployment and increased poverty.513

Approximately six million people in the MENA States live on less than one US dollar per day, while 68 million live on less than two US dollars per day. In recent years, several of these States have experienced alarming increases in the numbers of poor. Jordan and Tunisia, however, have shown a decrease in the poor population.

In the MENA region, as in the rest of the world, women are at a greater risk of being poor than men. Women’s poverty is linked to many other social disadvantages, and often stems from them:

Many factors increase women’s risk of impoverishment, such as their unpaid and unrecognized responsibilities in the household that leave little time for entrepreneurial and income-generating activities, unequal access to household resources, lack of equal decision-making at home and in the public sphere, and domestic violence and gender discrimination.514

Another issue that aggravates poverty in the MENA region is the size of the family. The greater the number of children, the more prone the family is to poverty, as the family income must be stretched more thinly. As in most parts of the world, poverty is more prevalent in rural areas than in urban zones.515 Rural families have a tendency to produce more children, in order to provide an agricultural labour force. Yet, on the whole, families in the MENA region tend to have more children than they can support, leading to a lower standard of living for all members of the family.

Among families in both rural and urban areas, there is a strong correlation between poverty and education levels.516 Poor women tend to be either illiterate or have only primary education. Furthermore, education levels of individual women in the family strongly correlate with the overall family education level: in other words, if one or more women in the family are educated, all the family members’ chances of attaining a higher level of education increase, both in urban and rural settings.

Housing poverty is pronounced and widespread in the MENA region, with female-headed households suffering the most. The COHRE WHRP fact-finding mission found this to be especially true in Jordan, where female-headed households live in the deepest poverty. This is because a source of income is very hard to find for women, mainly because of their other duties in relation to the home and children.

Housing conditions are good indicators of poverty and economic status. Female-headed households in the Arab countries face significant challenges finding clean, hygienic housing. They are more likely to live in slums and [with] no access to clean and safe water supply.517

Social safety nets are crucial to protecting women from the adverse effects of poverty. It is difficult to assess accurately to what extent such provisions are in place in the MENA region because there is a general lack of gender-disaggregated data.518 What can be stated with certainty is that the programmes that are in place are insufficient and inadequate to meet the growing needs and numbers of female poor.

514 Ibid.
515 Ibid., p. 233.
516 Ibid.
517 Ibid.
518 COHRE fact-finding mission.
Many attribute the increasing poverty of women in the region to the poverty factors indicated above in this subsection (3.6). Clearly, however, these are not the only reasons. Increasing discrimination, a rise in fundamentalism, and a reversion to traditionalist ideas are also to blame.

Some instances of the denial of women's inheritance rights may be directly linked to the growing poverty in the region. Many of the women interviewed during the COHRE fact-finding mission stated that their rights had been denied because of simple greed. They said that their brothers or uncles were just greedy and had used any justification they could – including religion and culture – to deny them their rightful inheritance or any other property. Resources are scare, and men do whatever they can to gain more.

3.6.1 Restrictions on women's economic activities

As discussed above in Subsection 3.1.2.2.5, Islamic jurisprudence justifies unequal inheritance rights for women by arguing that, as Islamic family law places the full responsibility for financial upkeep of the family on the shoulders of the husband and father, the wife, even if she is wealthy, has no obligation to spend money on her family. It is assumed that married women can “spend their resources frivolously”\(^{19}\) and that a reduced share of inheritance therefore suffices for them.

While giving women such status within the family may seem benevolent, this is indicative of a social system that confines women to the home and denies them the possibility of active participation in economic and social life. The notion that a woman is not supposed to be economically independent is the downside of the affirmation that she does not have to pay her own expenses because a male relative will be financially responsible for her throughout her life.

The obstacles to women's economic and social activity are not of a legal nature, for according to Islamic jurisprudence women can own and manage property irrespective of their marital status. It is other factors, such as the restrictions on women's freedom of movement and access to public life, which are based on the more or less strict segregation of sexes, that seriously hamper women's ability to play an active role in economic and social spheres. Ironically, men sometimes claim that women are excluded from economic and social life because they lack entrepreneurial and managerial skills. In reality, any lack of such skills is far more likely to result from this exclusion than to be its cause.

Women who actually inherit a share of an estate are rarely given the productive property. This practice is also attributable to the traditional exclusion of women from economic and social activities. Historically, women were often excluded from inheriting property that required mobility and social interaction with strangers to be properly managed.

Women's imposed economic dependency on men is no genuine justification for depriving them of their unequal inheritance rights as enshrined in the Shari'a, but it is often a cause of their practical incapacity to claim those rights.

THE LAST LAUGH?

Until about 50 years ago, Turkish women in Black Sea communities who inherited a share of their father's estate were always given land directly on the shoreline, as this was thought to be the most worthless. Rocky and without adequate soil, it was uncultivable. However, when Turkey began developing the tourist industry, those women who had been given the dregs of their father's lands had the last laugh. Many of them sold their land for millions of US dollars to developers thirsty to profit from the thousands of tourists flocking to the beautiful Black Sea shores. For once, inheriting less was actually inheriting more.\(^{20}\)

\(^{19}\) Erika Loefler-Friedl (n. 503 above).

\(^{20}\) COHRE interview with the Turkish NGO Women for Women Rights (WWHR) - New Ways, Sept. 2004.
DENIAL OF INHERITANCE RIGHTS:
DIFFERENT REGIONS,
SAME EXCUSES
Although this quote from the Human Rights Watch website relates to the denial of women’s property rights in sub-Saharan Africa, it might just as well have been written about the denial of women’s inheritance rights in the Middle East and North Africa (the MENA region). In terms of the complex mix of factors that underlie such human rights violations, these two regions are strikingly similar.

It is well known, especially to the international women’s movement, that in almost all regions of the world today women and girls are denied their property rights – including their right to inherit housing, land and other property – as if this were part of ‘the natural order of things’. In most cases, the effects are disastrous. Irrespective of the denial of inheritance rights, a large proportion of women and girls – generally speaking, the less economically developed the country, the larger the proportion – are denied their rights to housing and land, have minimal access to education, and are economically unempowered. When, on top of all that, they are denied their rightful share of inheritance and, in some cases, are also driven from their family or matrimonial home just for attempting to claim it, they are often plunged into destitution and/or homelessness.

In the MENA region, as emphasised in Subsection 3.1.1, above, the existence of secular civil laws in juxtaposition with other laws and practices based on religion and tradition has resulted in a quagmire of confusion that serves to deny women their inheritance rights.

A similar situation exists in sub-Saharan Africa, as research conducted in 2003-2004 by the COHRE Women and Housing Rights Programme (WHRP) has revealed. Although systems of statutory, secular law are in place to govern inheritance rights, women in that region are commonly denied these rights in the name of customary law and tradition.522

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521 Human Rights Watch, ‘Q&A: Women’s Property Rights in Sub-Saharan Africa’

The critical similarity between the two regions, highlighted through research by the WHRP and other women's groups and activists, appears to be the operation of dual or parallel legal systems. Yet there are many other similarities. All the following statements are true of both regions:

- The legal and judicial systems – secular or otherwise – signal fail to protect women’s right to inherit on equal terms with men.
- Non-statutory laws play a major role in governing inheritance, yet these laws are systematically misunderstood and misapplied, to the detriment of women.
- The rules and traditions that serve to deny women their inheritance rights are largely based on the notion that tribal or family ties via the male bloodline are more important than other forms of relationship.
- The family and the broader community exerts strong prohibitive and judgemental pressure on women to prevent them from claiming their inheritance rights.
- Stigma, shame and lack of awareness help to maintain the unequal status quo.
- The denial of women’s inheritance rights occurs on a massive scale and constitutes a clear violation of States’ obligations under international human rights law.
- Political will to address the denial of women’s inheritance rights is almost entirely lacking.

The table below outlines some of the more common obstacles to women’s inheritance, and their impacts, both in the MENA region and in sub-Saharan Africa. This comparison is useful for several purposes: firstly, it highlights the pervasiveness of the obstacles women confront when trying to claim their inheritance rights; secondly, it reveals the similarities – in terms of problems faced by women – between a religion-based system and one based more on tribal custom; thirdly, it clarifies common themes, thus facilitating an overall analysis of the issues within a human rights framework and indicating recommendations for change that are applicable to both systems.

<table>
<thead>
<tr>
<th>OBSTACLE</th>
<th>MIDDLE EAST/ NORTH AFRICA</th>
<th>SUB-SAHARAN AFRICA</th>
<th>COMMON THEME</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LEGAL:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Conflicting dual legal systems</strong></td>
<td>Mix of religion-based and civil law: personal status matters are governed by religion-based laws.</td>
<td>Parallel systems of customary and civil law: deference is given to customary law in matters of personal status (divorce, marriage, inheritance).</td>
<td>Dual or parallel systems are confusing as regards applicability. Outcome of law is uncertain. No legal 'safety net' exists for women.</td>
</tr>
<tr>
<td><strong>Lack of domestication of international human rights law</strong></td>
<td>Most States have ratified major human rights treaties, but several States have done so with reservations which allow for domestic laws that are discriminatory to women.</td>
<td>Most States have ratified major human rights treaties, but some States have done so with reservations which allow for deference to custom and religion. International human rights law is not automatically domesticated.</td>
<td>Protections guaranteed under international human rights law are ignored. Governments ratify international treaties, but with reservations that deny women their rights.</td>
</tr>
<tr>
<td><strong>Lack of rights awareness</strong></td>
<td>Women are unaware of their actual rights under religious laws or civil/constitutional laws that protect their equal rights.</td>
<td>Women are not made aware of their rights under civil laws and thus defer to discriminatory customary laws.</td>
<td>Illiteracy and insufficient education prevent women from gaining rights awareness. Governments make little or no effort to educate women on law and rights.</td>
</tr>
<tr>
<td><strong>Lack of access to justice</strong></td>
<td>Women have access to religious courts (dealing with personal status matters) but such courts are discriminatory, they insist on male ‘chaperoning’ and are too expensive.</td>
<td>Customary courts (at lowest level, dealing with personal status matters) are discriminatory, they insist on male ‘chaperoning’ and are too expensive.</td>
<td>Court system is too expensive and complicated for women to access. Courts insist on women being accompanied by men, which puts women in subservient position. Entrenched discrimination in courts. Legal aid for women is limited or non-existent.</td>
</tr>
<tr>
<td><strong>Idea that customary/religious law is ‘set in stone’ and cannot change</strong></td>
<td>Islam-inspired law is not stagnant; it actually calls for change and modernisation. However, some people regard the Shari’a as infallible. It is difficult to convince people of the need for change or re-interpretation.</td>
<td>Custom is portrayed as essential to maintaining African cultural integrity and thus cannot be changed. However, much current customary law resulted from colonists’ false documentation of customary practices.</td>
<td>Both custom and religion are interpreted when applied; they can and should be open to new interpretations to protect women’s rights.</td>
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### OBSTACLE

<table>
<thead>
<tr>
<th>MIDDLE EAST/ NORTH AFRICA</th>
<th>SUB-SAHARAN AFRICA</th>
<th>COMMON THEME</th>
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<tbody>
<tr>
<td><strong>CULTURAL:</strong></td>
<td></td>
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<tr>
<td>Custom and religion are misinterpreted and misapplied to deny women's rights: as if they prescribe gender inequality</td>
<td>Men claim that religious authority legitimises their oppression of women. Men often misinterpret the inheritance system not only to deny women their inheritance share, but also to escape the responsibilities Islam places upon male family members. The religion itself does not prescribe gender inequality.</td>
<td>Distortion and misapplication of customary law. Custom and religion are interpreted by males and entrenched in patriarchy.</td>
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<tr>
<td>Traditions applied in the name of culture to undermine women's rights.</td>
<td>Severe discriminatory traditional practices and notions are entrenched. Women are made to believe that it is not customary for women to own land and housing, and therefore they should not attempt to do so.</td>
<td>Severe discriminatory traditional practices and notions are entrenched. Tribal leaders and other traditional authorities maintain women's unequal position in the community, justifying their actions by citing tradition. Although harmful traditional practices are declining, they continue in some States/tribes/communities.</td>
</tr>
<tr>
<td>In some MENA States, 'honour crimes' are committed: males murder a female family member who has allegedly 'dishonoured' the family name, in order to take her inheritance share.</td>
<td>In some States, traditional practices degrade widows: 1) 'widow-cleansing' ritual (widow forced to have sex with paid 'cleanser' to rid her of her husband's spirit); 2) wife inheritance (enforced marriage of widow to male relative of deceased husband).</td>
<td>In some MENA States, 'honour crimes' still occur. In African communities, having abandoned a ritual because of the HIV/AIDS risk, introduce a modified form that is less harmful yet may still embarrass and psychologically harm women. Polygamy in both regions undermines women's rights.</td>
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<td>Polygamy is practised.</td>
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<td><strong>Distortion and misapplication of customary law.</strong></td>
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<tr>
<td>OBSTACLE</td>
<td>MIDDLE EAST/ NORTHERN AFRICA</td>
<td>SUB-SAHARAN AFRICA</td>
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<tr>
<td><strong>Social:</strong></td>
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<tr>
<td>Social stigma prevents women from claiming inheritance</td>
<td>Women who claim their inheritance rights are perceived as haram (shameful for going against religion) and ayy (shameful for going against tradition).</td>
<td>Women who claim their inheritance rights are seen as a threat within the community and may be ostracised by family.</td>
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<tr>
<td>Society is based on patriarchy and has double standards</td>
<td>Patriarchy is deeply entrenched throughout society; women themselves perpetuate it by accepting pervasive notions of their inferiority.</td>
<td>Male dominance in all spheres of life is considered the norm. Colonialism further entrenched this patriarchy.</td>
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<tr>
<td>Family pressures</td>
<td>Women bring shame to the family if they ‘take’ a brother’s share. Women are forced to defer to the family’s wishes.</td>
<td>‘Property-grabbing’ by in-laws is common. Women are often coerced by their family to give up their inheritance.</td>
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<tr>
<td>Inheritance is considered a private matter, not one for State intervention</td>
<td>Women are afraid to even speak of inheritance, for they feel they are betraying family secrets. Arab society is built on the family, not the individual. Betrayal of the family is regarded as a very grave sin.</td>
<td>In Africa, family ties are very strong, and a resolution of any conflict is usually attempted first within the family. A mediator is rarely brought in, and women are often at a disadvantage.</td>
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<td>Women are seen as ‘transient’ and not independent; they are a ward of a male at all times.</td>
<td>Women go from being a temporary part of their natal family to being subsumed into their husband’s family. Payment of mahr (bride price) reinforces the idea that women are property to be ‘bought’.</td>
<td>Women are seen as property; payment of lobola (bride price) reinforces this notion. Women, on account of being ‘property’ themselves, are perceived as being unable to own anything in their own name.</td>
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</tbody>
</table>
### 4.1 INHERITANCE IN THE MENA AND SUB-SAHARAN AFRICAN CONTEXTS

It is in the area of intestate succession – the inheritance of property from a deceased person which is not regulated by a will – that women suffer the most discrimination. Throughout the world, intestate succession is steeped in patriarchy; the generally accepted norm is that property, especially housing and land, should only pass to male heirs.

Under African customary law, women and girls are excluded from inheriting with a general (though not universally applied) rule that only males who are related to the deceased through a male bloodline qualify as intestate heirs. Even in tribes with a tradition of matrilinearity, although the intestate property may be passed via the female bloodline, it passes only to male descendants of that line.

Under Shari’a-based personal status codes, as explained in Subsection 1.3 of this publication, women and girls may be entitled to inherit, though their share is generally limited to one half of the amount that is passed on to a male relative who has the same degree of relatedness to the deceased. Only rarely is a female entitled to the same share as the male; for example, a mother receives a one-sixth share of her deceased son’s estate, as does the father.
In both contexts, then, the inheritance system generally favours males over females in accordance with the principle of patrilinearity. This principle is based on the notion that the property must remain in male hands in order to preserve it for the family bloodline, which is conceived of as running through the males.

International human rights law protects women’s rights to equality in ownership, control and inheritance of property. Any system of law, including informal customary or religion-based law, that treats women unequally with regard to their property rights is therefore in clear violation of international law. Women are to be given equal rights in all aspects of family life, including inheritance. States Parties to instruments of international law are obligated to reform all discriminatory systems under their jurisdiction. It is imperative that States in the MENA region and sub-Saharan Africa heed these international obligations.

4.2 LEGAL OBSTACLES

In almost all legal system throughout the world, women’s rights are accorded lesser value and importance than men’s, and women’s needs are classified as secondary. Even where laws ostensibly provide for gender equality, in practice they are often applied unequally. In particular, women in many parts of the world find it extremely difficult to access and benefit from rights-protection mechanisms, whether they be the formal courts, informal traditional structures, police or other law-enforcement authorities, or administrative systems.

This is especially true when dual or parallel systems of law exist, as is the case in the MENA region and sub-Saharan Africa. Comparing these two regions is particularly interesting because it provides an opportunity to examine holistically how international human rights law can address the complex difficulties presented by such systems.

Both regions operate what may be considered as a formal/official system of law in parallel with an informal/unofficial system: that is, the laws applied by the formal legal system (whether they be based on religious, cultural or secular principles, or a combination thereof) alongside the informal system, which is an application – and usually an interpretation – of those formal laws at community and family level. The informal system rules the lives of most women, for they generally have little or no access to the formal system and therefore rely on communal and familial ‘rulings’.

In the MENA region, matters of women’s personal status are governed by formal, codified personal status laws, which are largely based on religious principles. The same religion-based laws are also applied in an informal system, when women are told what the law is and how it applies to their lives by family and community members, religious leaders and judges in religious courts, all of whom may misinterpret and misapply the law for various reasons.

Similarly, in sub-Saharan Africa, whereas matters of women’s personal status such as inheritance, marriage and divorce are officially governed by statutory and secular laws, in practice, informal customary law has a much greater influence on most people’s day-to-day lives. This informal system is controlled by tribal leaders and customary courts (generally the lowest and thus the most accessible courts in the land, largely applying customary, non-codified law), and is also subject to communal and familial pressures.

In both regions, this dichotomy between the formal and the informal definition and application of law presents an often insurmountable obstacle to women’s realisation of their rights, especially as regards personal status. They can neither access nor benefit from the protections and remedies that the formal legal system may offer; rather, they are subject to the law as interpreted according to the whims and preferences of the community and the family. This almost always means that the male-dominated and male-determined status quo is maintained. Women as individuals in their own right are not protected.
**4.2.1 Lack of constitutional protection**

The constitutions of all the MENA States surveyed in this publication and all the sub-Saharan African States surveyed in the WHRP’s previous research (Botswana, Ethiopia, Ghana, Nigeria, Rwanda, Senegal, South Africa, Swaziland, Zambia and Zimbabwe) contain broad guarantees of equality and non-discrimination.

Nonetheless, in the legal systems of those States, discrimination against women continues to be widespread – indeed, standard – practice. Such discrimination is often implicitly justified by the very constitutions that ostensibly protect all citizens, including women. For example: the constitutions of Jordan and Tunisia do not expressly prohibit discrimination based on gender; those of Egypt and Iran stipulate that the discriminatory Shari’a applies in matters of personal status; and those of some sub-Saharan African States, including Swaziland and Zambia, include provisions that defer to custom in matters of personal status — again, implicitly allowing for discrimination.

Painful and degrading experiences have shown that dual, or parallel, legal systems, whether they consist of customary and civil laws, or religious and civil laws, tend to be detrimental to women. (Such systems may even be said to be triple, for they embody traditional norms, which are a kind of influential law. See further, Subsection 4.3 below, Custom and tradition). The way in which dual legal systems operate seriously undermines any statutory protection, leaving women vulnerable to violations of their inheritance rights.

Furthermore, national legislation – in sharp contrast to international human rights law – is often ineffective and rife with shortcomings, which are reflected in the exclusion from any benefits or remedies of large segments of the female population. Often, such legislation specifically excludes unmarried women, women cohabiting with men, and women married under certain forms of customary and/or religious marriage rites from any protection whatsoever.

**4.2.2 Manipulation of customary and religious law**

Under the Shari’a-based personal status laws that apply in the MENA region, after the death of her husband, a widow is entitled to be maintained by her closest male relative, who must ensure that she is well cared for. Similarly, under African customary law, a widow is entitled to maintenance from her deceased husband’s estate for as long as she lives, and she is to be looked after by the nearest male relative in her husband’s bloodline. Although these entitlements do not promote women’s independent rights, at the very least they protect women from destitution and homelessness if properly applied.

However, in both regions, what is prescribed by non-statutory law in order to assist and support women rarely happens in reality. Instead, customary and religious laws are implemented in a way that discriminates against women, even beyond the gender discrimination that may be inherent in such legal systems. Both types of systems are selectively and deliberately manipulated to maintain the patriarchal status quo. Exploiting women’s needs for strong family bonds (to ensure protection, security and a certain stature in the community), those who seek to enrich themselves solely out of greed, or to maintain male dominance, misuse customary and religious laws to seize women’s property. Rather than fulfilling their obligations to use such property to care for widows, they leave them homeless and destitute.

**4.2.3 Lack of legal literacy**

Laws and policies are usually written in difficult legal jargon and are far too complicated for non-lawyers to understand. They are therefore inaccessible to most women, especially the uneducated and the illiterate. There are few, if any, efforts on the part of governments and lawmakers to disseminate easily understandable information on the existence of laws, let alone their contents and applications. If the law – no matter how well formulated – is not known to, or properly understand by, women, it is completely ineffectual for them.
The Shari’a as applied in MENA States is complicated and only disseminated through religious leaders, who are exclusively male. As such, specific rules are open to false interpretation, according to the whim or prejudice of those charged with explaining them. In sub-Saharan Africa, where the informal system of customary law is largely uncodified, women have no alternative but to rely on customary leaders, who are often biased, to learn what the laws say. Both of these circumstances create an extremely unfavourable situation for women.

4.3 CUSTOM AND TRADITION

Custom and tradition form the basis of human activities all over the world. They provide guiding principles of continuity and interrelationship between successive generations. Tradition is often described as a ‘mirror of accepted usage’, which implies that it should be capable of flexibility and adaptability to changing circumstances and society. Customary and traditional practices encapsulate and reflect all the characteristic beliefs – religious or otherwise – and social institutions that are unique to a particular people, community or culture.

However, custom and tradition also entrench patterns of behaviour that may be unfavourable or even detrimental to certain groups or members of society — in the present context, women and girls who might otherwise benefit from a fair share in inheritance. For example, an extended family structure is a distinctive feature of the social order of custom-based African and religion-based MENA societies. To societies in both regions, family and tribal bonds are of fundamental importance; they take precedence over individualism and ought to provide secure lines of support and protection. The problem is that the head of this extended family structure is a male who may misuse his power and control to favour other males at the expense of females. Unfortunately, in many of these societies, this is the rule rather than the exception.

Because patriarchal customs and traditions are so pervasive, so effectively serve male interests and encounter such little opposition, they tend to develop into new forms that entrench the male-dominated status quo even further.

The deference to cultural norms or religious principles that prevails wherever customary or religious law is integrated with civil law often results in women being denied their fundamental rights because such norms and principles are interpreted and applied almost exclusively by men.

The terms ‘customary law’ and ‘religious law’ (in particular, Islam-inspired law, the Shari’a) are, in a sense, abstract. They take on concrete significance when viewed as they operate in their various spheres of influence: as customary practices; in religious or spiritual life; in legal and judicial systems, including actual determinations of what is right and what is wrong; as social and cultural determinants; and, finally, as political instruments in a power struggle.

Progressive elements often condemn traditional African culture for obstructing equality between the sexes, whereas traditionalists insist that customs and traditions must be upheld at all costs. Similarly, in the MENA region, the more traditional and religious countries are criticised for a track record of discrimination against women, whereas purists claim that religious laws are infallible.

There is a strong tendency to protect that which is regarded as unique to each region: the customs and traditions of sub-Saharan Africa; the strong religious identity of the MENA region. The custom or religion ‘card’ is often publicly played by politicians and others who claim to be fighting to prevent the loss of African or Arab values.

There is no doubt that custom, tradition and religion are vital aspects of African and Arab societies, and
that their benefits are innumerable. It is clear that their roles in, and impacts on, each region are complex and require far more than just simplistic reasoning if they are to be properly understood.

However, searching questions must be raised when such profoundly important systems of any society are being used to deny the basic human rights of more than half the population — the women and girls. The most important of these questions is whether or not such systems promote basic human rights.

WOMEN AS DEPENDANTS

Women, it seems, are viewed as being dependent on their male relatives, as wives or daughters, but not as individuals deserving of a dignified and rewarding life in their own right.

In Africa, arguably, the notion that women should not own property is most starkly evident in the traditional practice of ‘wife inheritance’, whereby, after the death of her husband, a widow automatically becomes the wife of her brother-in-law. Some interpret this as a reprehensible expression of the principle that women should not own property because they themselves are property. Others see it as a commendable form of familial caregiving: women, especially widows, should be ‘taken care of’ by their male relatives rather than having to look after themselves.

Similarly, women in the MENA region are ‘freed’ from the ‘burden’ of caring for themselves or their families because that is the responsibility of men, as explained in Subsections 1.3.1.2, 3.1.2 and 3.5.5.1, above. Because of this ‘freedom’, women are seen as being dependent on men, even though they do contribute to the household, not only through their traditional household and familial care, but also — in many cases nowadays — financially. However, the former type of contribution is considered to be women’s duty, whereas the latter is not obligatory but is regarded as being done ‘voluntarily’. Thus, neither type of contribution is acknowledged.

It is important to realise that it is not just men who ascribe to such notions: for varying reasons, many women also adhere to traditional gender roles and defend the status quo of gender inequality. It is often argued that such women have fallen victim to ‘the socialisation of their own subordination’.

In the MENA region as in sub-Saharan Africa, both custom and tradition can be regarded as instrumental in keeping women at a subservient and dependent level, serving the patriarchal status quo. Such suppression is a clear violation of the internationally guaranteed human rights of women — their right to self-determination and independence, and their individual rights to all that men are also entitled to.

4.4 SOCIAL OBSTACLES

In both regions, and indeed throughout the world, inheritance rights — like so many rights that require State intervention — are seen as private, as a ‘family matter.’ Therefore, the State often refuses to intervene. This exacerbates the difficulties women face with regard to inheritance, and serves to further entrench the often discriminatory application of law at the family and community, or ‘informal’, level.

Women themselves are made to believe that inheritance is a purely family matter, and therefore do not seek help when they need it. Nor do they bother to learn about their inheritance rights as enshrined in the law. Many women assume that the decisions made by the family will be in their best interests. Sadly, however, this is often not the case.

Although this practice is becoming less common, it still occurs in parts of Ethiopia, Nigeria, Swaziland and Zambia, for example.
In the MENA region and in sub-Saharan Africa, it is men who have played the leading role in interpreting customary and religious law. As with all human interpretations, there is much room for error and personal and/or dogmatic bias. Some argue that, because the Shari’a has been largely interpreted by men living in societies dominated by patriarchal ideas, these interpretations are unlikely to promote women’s rights — as they would have if they had been written from an unbiased perspective. Similarly, the fact that customary law in sub-Saharan Africa has been largely interpreted by males means that it tends to be discriminatory towards women in its application.

4.4.1 Ward of the male

In both the MENA region and sub-Saharan Africa, a woman is usually regarded as a ward of a male, whether he be her husband, father or other male relative. Independent rights, especially those in the economic, social and cultural realm, are not accorded to women. Usually, the maintenance of ‘the sanctity of the family’, the male-dominated status quo and the division of labour is seen as far more important than women’s rights.

In most societies in both regions, when women are married they are perceived as being incorporated into the husband’s family and are no longer considered a part of their natal family. According to this perception, women and girls should not inherit, as they will sooner or later get married and leave their natal family. If they were to inherit property, that would pass to the husband and become part of his family’s property.

4.4.2 Social stigma

Social stigma is another enormous obstacle to the realisation of women’s inheritance rights, and even in cases where the law provides protections, women may be reluctant to claim their rights in a court of law because of the severe social stigma that can result from doing so. Formal adjudication is alien to most traditional African cultures, which generally have their own customary means of resolving disputes.

A lone woman going beyond the traditional system and presenting her claim within the formal court system tends to be viewed in a very negative light. She may be regarded as being greedy, disrespectful, or smug. In particular, a woman laying claim to her housing and land rights after the death of her spouse may be accused of being ‘after his money’. Often, the widow is even accused of having caused his death in order to seize the property for herself, and she may be harassed, physically assaulted and/or left entirely destitute.

Beliefs based on tradition or religion are sometimes used to reinforce this social stigma. In sub-Saharan Africa, traditional notions of bewitchment often keep a woman from claiming her rights. She is told – and generally believes – that if she lays claim to her deceased husband’s property she and her children will be bewitched by in-laws or others who may want the property. Spiritual beliefs and practices are fundamental to most African tribal cultures.

In a similar manner, women in the MENA region are made to believe that claiming their share of inheritance, or their share of maintenance from their husband or male family members, is haram, or shameful to Islam. (Haram refers to any act that violates the dictates of Islamic teachings and codes.) In fact, women’s inheritance rights are clearly defined in the Shari’a and thus completely in line with Islam. Nevertheless, women who attempt to claim their rights are made to feel ashamed and are accused of going against their religiously mandated role in society and the family.

Given the close-knit, communal nature of most MENA societies, rumours about women's behaviour spread quickly. If a woman acquires a ‘bad reputation’, there is a real danger that the community will ostracise not only her but her family. Women and girls are bound to a ‘culture of shame’, in which concerns about female honour prevent many of them from participating in social activities, finishing school, working and inheriting. The fear of dishonouring oneself or one's family serves as a strong internal constraint on behaviour and plays a key role in reinforcing the patriarchal kinship system.

In sub-Saharan Africa, almost all pressure exerted upon women to give up their inheritance rights – varying in degree from verbal persuasion to physical violence – comes from the family: the in-laws in particular, but also the immediate family. Appreciating the traditional key role of sons in ensuring the family's economic well-being is essential to understanding why such conflicts between a widow and her in-laws arise. The husband's parents often believe that they are entitled to the son's property if he dies: after all, they took care of him when he was a child, saw that he was educated, and prepared him for a successful life. In contrast, a daughter is not viewed as an investment but is seen as leaving to join another family when she marries, whereas sons always remain linked to their parents. As the general economic malaise makes it more and more difficult for families to make ends meet, they increasingly rely on their sons.

In most communities in the MENA region and sub-Saharan Africa, women marry into their husband's family and community. After the death of her husband, however, a widow – with no independent means of survival and no social ‘safety net’ to support her – usually has no alternative but to return to her natal family and original community, even if she has not lived there for decades. In many cases, after years of absence the widow is no longer considered as a daughter and is not welcomed back to the natal home. In some cases, of course, the natal home no longer even exists. Thus, she has nowhere to go, no options left. Widows often have no alternative but to put themselves at the mercy of their in-laws; many end up destitute and/or homeless.

4.4.3 Fear as a common denominator

In the MENA region and sub-Saharan Africa, many widows who try to claim their inheritance rights are threatened with, or actually subjected to, violence ranging from harassment, through beating and rape, to murder. Indeed, widows face some of the most extreme forms of psychological and/or physical degradation and are frequently mistreated, not only in the context of inheritance disputes but, in sub-Saharan Africa, also during traditional ‘widow-cleansing’ rituals.

‘Soft’ methods involving social pressure, such as socialisation and conformity to gender-roles, ensure that women remain subjugated to men for their whole lives — useful objects within the family that must be made aware of, and retain, their subservient status. However, in cases where these methods are not enough, when women begin to openly challenge the status quo, they are all too aware of the harsh penalty that most probably awaits them.

In both the MENA region and sub-Saharan Africa, fear is the common denominator that underlies the tight social control. Women fear the ostracism and the violence, often severe, that is the default response if they claim their rights. Many men fear that if women are given property or allowed their rightful share of inheritance, they will become too powerful and, in turn, that men will lose their dominance and control. They worry that they will lose their status as the ‘ruler of the household.’ The notion of equality and equilibrium between the sexes is clearly still an unattainable dream in such societies.

In both the MENA region and sub-Saharan Africa, women are denied a strong voice and an independent role in society by patriarchal attitudes and structures that form very strong barriers to women accessing or even attempting to claim their individual rights.

525 In such rituals, widows are made to have sex with a male family member or stranger, ostensibly in order to exorcise the deceased husband's 'bad spirits'. This is still widely practiced throughout Africa, especially in rural areas.
4.5 POVERTY AND OTHER STRUCTURAL OBSTACLES

In both regions, poverty is one of the greatest obstacles to women claiming their inheritance rights. Poverty-driven mass migration of rural dwellers to urban centres in search of employment, which occurs in all the States examined by the COHRE WHRP in both regions, destroys the traditional communal relationships that, in the past, sometimes provided a safety net for women. Where land is scarce, where families cannot even provide for their own children, and, particularly in the case of sub-Saharan Africa, where the HIV/AIDS pandemic has ravaged local economies, communities can no longer afford to take care of their widows.

4.5.1 Rates of poverty

In both regions, poverty is the norm. In recent decades, the MENA States have experienced mounting socio-economic problems, especially slow economic growth. This has lead to a rise in unemployment, a marked decline in living standards, and increased poverty rates. Today, approximately six million people in MENA States live on less than one US dollar per day, while 68 million live on less than two US dollars per day. In the MENA States, poverty is deeper and more extensive in rural areas.\(^\text{526}\)

The grinding poverty in which so many sub-Saharan Africans live undoubtedly aggravates the problem of ‘property-grabbing’ (in-laws dispossessing a widow of her home and land). While the social subordination of women is clearly a common factor in the denial of their inheritance rights, it is also true that financial poverty makes women far more susceptible to property-grabbing and maltreatment.

As in the rest of the world, women in both regions are at greater risk of being poor than men. Women’s poverty is linked to, and often stems from, many other social disadvantages. Various factors increase women’s risk of impoverishment, including: their unpaid and unrecognised household duties, which leave them little time for entrepreneurial and income-generating activities; unequal access to household resources; unequal decision-making responsibilities at home and in the public sphere; domestic violence; and gender discrimination.\(^\text{527}\)

Another important indicator of poverty is housing. In both regions, women make up the majority of those living without safe, affordable housing, and without adequate access to clean water and sanitation.\(^\text{528}\)

Women in both regions are in desperate need of equal access to employment, resources and the market.

4.5.2 Political will

In both regions, the political will to effect positive change for women is almost totally lacking. Governments are apathetic — often, not only about inheritance rights issues, but about all women’s rights. In the political sphere, women are regarded as secondary and therefore their issues do not get the attention they deserve.

Government officials in both regions responded with interest and, in most cases, sympathetically to the questions posed and the issues raised by the COHRE WHRP during its fact-finding missions. In all cases, especially Tunisia and Turkey in the MENA region, and Rwanda and South Africa in sub-Saharan Africa, the government officials interviewed said they wanted to do something to improve the women’s rights situation — without, however, being able to clarify what they might actually do.


\(^{527}\text{Ibid.}\)

\(^{528}\text{Worldwide, approx. 70\% of those living in slums or slum-like conditions are women.}\)
In order to protect women’s rights and ensure that they can be realised, radical changes are necessary to legal systems and government attitudes in both regions. Small victories have been gained in recent years: Morocco has reformed its family code, the Moudawana; women in Kuwait have been given the right to vote; Turkey, anxious to join the European Union, has increased its penalties for honour crimes, which used to be extremely lenient; decisions of South Africa’s Constitutional Court have overruled customary law and upheld women’s rights; and pending constitutional reform in Zambia looks set to give women equal rights to land and property, contradicting custom. These are victories that must be celebrated. However, the sweeping changes that are needed to dramatically improve women’s everyday lives will not come at once. In both regions, the lack of political will means that brighter prospects for women must be created slowly — one small victory at a time.

4.6 CUSTOM AND RELIGION FROM A HUMAN RIGHTS PERSPECTIVE

Non-discrimination is the cornerstone of human rights, yet the underlying theme running through this publication is the misuse of traditional customs, religious teachings and cultural attitudes to justify widespread discrimination against women and girls in the Middle East and North Africa. Often under the guise of ‘protection’, customary and religious laws and practices are instrumental in the denial of women’s autonomy and independence in areas including health care, social benefits, housing and land, and inheritance.

However, this does not necessarily imply that customary and religious laws and practices are inconsistent and/or incompatible with fundamental human rights principles. The problem lies not with custom and religion themselves, but with how they are interpreted, implemented and enforced by society — in particular, by its patriarchal institutions, systems and structures.

It is important to realise that all that is deemed customary or religious – that which is considered to have been handed down from generation to generation and/or to be of divine origin – has been transmitted through interpreters and exponents from its origins to the present. Historically, those interpreters and exponents have been almost exclusively male. Today, also, customary and religious laws are interpreted and applied by interveners who, in almost all cases, are male. Furthermore, the interpretations and applications promulgated by these interveners often serve to fulfil a political agenda.

The obvious evidence for this male dominance is the utter absence of women from positions of power in customary and religious institutions, systems and structures. Thus disempowered, women have no opportunity or outlet to protest against, or press for reform of, all that which they experience as discriminatory. The various subservient roles they are assigned only reinforce the status quo of total male control.

Comparing the experiences of women and girls in the MENA region with those of their counterparts in sub-Saharan Africa reveals an abundance of similarities, even though religious laws predominate in the former region and customary laws in the latter. However, there are subtle differences between the institutions, systems and structures that operate in these two regions. For purposes of simplicity, the following subsections (4.6.1-4.6.5) focus on the main issues of discrimination against women.

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529 A full, in-depth analysis (which is beyond the scope of this publication) would not consider women as a homogenous group but would take account of their varied situations.
### 4.6.1 Custom, religion and patriarchy

Islam-inspired law (like most religion-based legal structures) and African customary law both favour the collective – in particular, the family – over the individual, often with negative consequences for the status of women.

Individualism ... is not an established feature of Muslim societies or of Islamic culture, nor can one find a historical example of an Islamic school of thought that celebrated individualism as a virtue. Islamic civilisation did not create an intellectual climate that was conducive to according priority to the protection of individual rights and freedoms.\(^5\)

It is equally true of sub-Saharan African societies that they have no tradition of individualism or individual rights and freedoms.

It is the collective, rather than the individual, that is the basic unit to be governed within MENA and sub-Saharan African States. State institutions are used to strengthen the control of the collective unit – the extended family, the clan and/or the tribe – over women, making them even more dependent on these institutions. This focus on the collective ultimately subjugates women, denying them their internationally guaranteed rights to equality, self-determination and self-agency.

Roles within this collective unit – in particular, the family – are well defined. The dominant male is at its head and the female is placed beneath the dominant male (or males) and, as a result, is subject to his (their) rule and whim. A woman's role is always defined in terms of her relationship to a male within her family: she is a wife, a sister, a mother, a daughter — this, and only this, determines the rights she has or may be allowed.

The 2004 UNIFEM report *Progress of Arab Women* reflects on this reality: “... Laws, practices, beliefs, and biases detract from women's social citizenship in the name of the preservation of the family unit.”\(^6\)

So influenced, “women in Arab societies may rationalise gender inequality and accept a degree of control, a measure of submission, and even a modicum of violence in the name of family survival and tranquillity.”\(^7\)

Women and children feel that they must conform to the wishes and needs of men within the family, for in return “women and the young are protected and supported by elder males.”\(^8\)

According to tradition, in a power system based on the tribe-clan-family hierarchy, male heads must provide protection to the women and children. This duty to shoulder the moral and material burden of protecting women and children is used to justify the fact that men are privileged with power. This traditional arrangement is often destabilised by socio-economic and/or family problems, such as poverty or the breakdown of a marriage.

The religious grounds for such social arrangements are the Islamic concepts of *welaya*, defined as “the rights of men to make financial decisions”, and *kawama*, defined as “the responsibility of men for their families derived from the income they spend and the endowments that were bestowed on some of them”.\(^9\)

As both these aspects of male power depend on the ability of men to provide financially for their families, if they cannot do so, they lose their power. Practices derived from the concepts of *welaya* and *kawama* reinforce societal and State attitudes that females are dependent on males.

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7. Ibid., pp. 137.

8. Ibid.

Some analysts and commentators have argued that such practices had their place in an era when women were forbidden to earn income. Today, however, the situation is greatly changed: women in an increasing number of Islamic households are themselves earning money and contributing to the household finances. Indeed, many such women are bearing as much of the financial burden as their male counterparts; in some cases, even more. However, the rules of inheritance have not changed to reflect this reality; the protectionist attitude towards women has not been abolished. The rules are stagnant.

Women are entitled to exercise and enjoy their economic social and cultural rights as autonomous persons. They cannot enjoy their economic, social and cultural rights equally if they are treated as inferior to men or as adjuncts of, or dependents of men, whether those men are family members or others. In turn, economic, social and cultural rights must be interpreted and applied in ways that recognize women’s right to full legal personhood and autonomy.\

Similarly to the norms in the MENA region, the fundamental precepts of customary African culture dictate that women should be protected by men. However, this ‘special’ status inevitably results in a denial of women’s individual rights and a dependency on their relationship to men. For example, bride price is sometimes cited as an expression of culture, as it was originally perceived as a measure and symbol of the worth and usefulness that women brought into the home. Today, however, bride price is often used as a justification to abuse a wife, as she is seen as having been ‘bought’ by the husband’s family — as a chattel owned by them, to be treated as they see fit. Such a custom technically makes women the subject of men and therefore clearly violates international human rights law.

The issue of women’s rights is often confused with protection by men. Women are afforded a kind of status through their relationship to a male — through that status they are then entitled to certain things — but again, only so far as their status remains subservient. The paternalistic notion of ‘protection’ for women is far removed from [the principle of] non-discrimination and equality, the foundation of human rights. Where is equality in protection?

4.6.1.1 Unequal standards

Women are treated according to standards far different from those applied to men. This discrimination pervades the life of any female: she is received with less joy at birth than a boy; she is less likely to go to school; she might be deprived of any share of her family’s inheritance; she is under continuous surveillance in order not to behave immodestly while her brother’s immodest acts are tolerated; she might even be killed for committing what her male family members usually boast of doing; she has very little say in family affairs or community interests; she might not have full control over her property and her marriage gifts; and finally as a mother she herself would prefer to produce boys so that she can attain a higher status in her community.

Women are very often regarded as a kind of ‘yardstick’ by which a custom, religion or culture is to be measured: women must act in an appropriate way, as defined by a norm that is derived from that custom, religion or culture. In most societies, however, these same rigorous standards are not applied to men. As the above quote so accurately demonstrates, women are berated, shunned and even killed for engaging in the same activities of which men boast.

In the Middle East and North Africa, so-called ‘honour killings’ still occur: women are murdered by their own family members for engaging in certain acts perceived as damaging to the family’s honour (sometimes for acts as trivial as speaking with a man who is not a relative). Although such killings have
been criminalised in all MENA States, there are still cases where greatly reduced sentences are handed down if the murderer pleas that he was ‘forced’ to kill his sister or daughter for allegedly dishonouring his family’s name. (See Subsection 3.5.4, above.) Other forms of coercion to maintain women’s ‘good’ behaviour include physical as well as emotional violence, often involving threats to deprive a woman of child custody, to stain her reputation within the community, or to ostracise her from the community.

In the Middle East and North African context, women’s entire lives are often built around avoiding that which is considered ayab, or shameful. The powerful codes of shame and honour, which are a legacy of the tribal society from which Muslim Arab society is descended, enforce identity and conformity of behaviour. Everything is permitted in order to safeguard the family or tribal honour: lying, cheating, and even murder. Honour makes life worth living whereas shame is a living death.\textsuperscript{538}

In customary societies in sub-Saharan Africa, women are placed in a specific category of expected behaviour, which is also justified as a means of upholding custom and tradition. Entirely different standards exist for men and women, especially with regard to family. Men are not expected to engage in household work at all — that is the role of women. Also, polygamy is allowed and even favoured; polyandry, or one woman being married to several husbands, is not even considered and would be strictly forbidden. Likewise, it is socially acceptable for men to have mistresses; women are heavily punished should they be found to engage in extra marital affairs.

Women, mostly, are required to be obedient to their husbands and other male relatives, to provide all household and family care, and to conduct themselves in a subservient manner. This is often called the ‘African way’. The labour of women is seen as a duty consistent with African ideals. Deviation from such behaviour is going against custom and tradition, the way things have always been done, and is met with reprimand and violence.

In societies based on custom and/or religion, all women are given specific, pre-defined roles to play. Their individual identities and potentials are thus suppressed in a way that takes no account of the fact that women do not form a homogenous group, but inhabit various economic, social and cultural strata and experience various layers of discrimination.

4.6.2 Custom and religion: exclusive of women

It is not legitimate to claim that tradition, custom and religious laws define societies — when women are not even involved in the process of devising such laws.\textsuperscript{539}

Women, traditionally less educated that men, have been and continue to be missing from any construction and interpretation of custom, religion and culture, which historically have been defined by men in positions of power such as traditional chiefs, religious leaders and colonial rulers, etc., depending on the context.

Sheikhs preach about inheritance rights, but are often the first to deny women inheritance. These people will interpret whatever they want into Islam. They will justify what they want; they will make muhalal (allowed) what is actually haram (forbidden and sacrilegious) so that they can benefit from it. They will bend the true nature of Islam for their own good.\textsuperscript{540}


\textsuperscript{539} Sizani Ngubane, Director, Rural Women’s Movement of South Africa, and women’s rights activist, statement made during the COHRE-sponsored Summit on Inheritance Rights as Human Rights, 3-4 Apr. 2005, Geneva, Switzerland (see n. 552 below).

\textsuperscript{540} COHRE interview with woman in Mafraq, Jordan, Sept. 2004.
In the MENA region, customary and religious laws have been and continue to be determined and interpreted according to the norms of patriarchal Arab society whereby unequal gender roles are assigned. Men with the power and influence to determine how customary and religious rules are to be applied manipulate custom and religion effectively to suit their own purposes. Imams and other religious leaders deliver daily interpretations of religious laws. Influenced by the desire and the need of patriarchal society – which, of course, includes themselves – to maintain the status quo that serves their interests, they ensure that their teachings do nothing to undermine male dominance.

In sub-Saharan Africa, in the rare instances that customary rules enshrining cultural beliefs and practices were documented, this was done almost exclusively by European colonists who superimposed their own patriarchal attitudes about women onto what they considered to be custom. They did not ask the women of the villages what the custom was; they asked the men — specifically, those male leaders who had the most vested interests in maintaining women in a role that was subservient to their own needs.

### 4.6.3 Custom and religion as a political agenda

Customary and religious leaders have great influence, especially on guidance in customary, religious and cultural practice. It is beneath the surface of customary, religious and cultural discourse that the struggle for power takes place.

The evolution of culture has been characterised by struggle. Those who win the struggle generally write its history. This is one way that men have selected those aspects of culture which serve their interests even though women have been fighting the oppression of certain cultural practices all along.\(^541\)

The influence of the political power agenda on custom and religion consolidates the suppression of women. Custom and religion are utilised to build and maintain power and to pursue a particular political agenda, or to illegitimately justify oppressive political systems.

There are scholars [who] argue that laws regulating marriage, inheritance, and property are among the formal means through which the nations define and maintain their economic and therefore their political strength. Thus, legislations controlled and protected the productive and reproductive outcomes of women and not women themselves in order to benefit the community and male members in the family.\(^542\)

The concept of equality between women and men is threatening to some, especially those who benefit from the patriarchy that prevails in all societies. The backlash against the movement for gender equality is concealed behind the defence of conservative interpretations of customary and religious traditions, which is translated into a political agenda.

It is precisely the political use of custom and religion that makes these two forces so pervasive and influential. Both carry with them a form of ‘identity politics’ that serves to pervert the true, original essence of the custom or religion:

It is also generally understood that, following its first rendering, this ‘word’ [religious teaching] is subject to interpretation, re-interpretation and manipulation by individuals and groups in order to achieve power (political, economic, social, cultural, etc.), very often at the expense of women. Especially in the case of Islam where the religion is the politics, this is very difficult. The question arises as to whether the human rights framework is equipped to deal with the identity politics that go hand in hand with the use and abuse of religion and culture.\(^543\) [Emphasis added.]

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\(^{542}\) UNIFEM (n. 452 above).

Often, the political powers-that-be misrepresent any dissent or opposition to custom or religion as an affront to society as a whole. In sub-Saharan Africa, any attack on customary tradition is decried as ‘anti-African’; in the MENA region, any attack on religious tradition is denounced as ‘anti-Arab’ or even ‘anti-Islam’. A progressive revision or re-invention of custom or religion is liable to be portrayed as the imposition of ideals and notions that are predominantly ‘Western’ or ‘foreign’ in origin — including gender equality and women’s rights.

Thus, custom and religion become tools of political gain for a few and oppression of others, most often women:

Political Islam is a major force that has imposed serious setbacks on women’s lives in the region, in the recent decades. Political Islam is a political movement that came to the fore against the secular and progressive movements for liberation and egalitarianism, against cultural and intellectual advances, and against the oppressed who are fighting for justice, freedom and equality in the region. In the 1970s, the political Islamic movement grew stronger and became more widespread. In the 1980s, the movement was supported and nurtured by Western governments to be used in the conflicts and tensions of the Cold War and in the fight against progressive movements in the region. Key features of political Islam include opposition to the freedom of women and to women’s civil liberties, and to freedom of expression in the cultural and personal domains.\textsuperscript{544}

4.6.4 Custom and religion: static or fluid?

In many societies of the MENA region and even sub-Saharan Africa, certain customary and religious laws were initially implemented to improve women’s situation. Historically, women were given many more rights and even privileges than the modern interpretations reflect.

When Islam was first introduced in the Arab world, it was revolutionary as far as women’s rights were concerned. According to pre-Islamic law, women themselves were inherited as part of the estate — they were considered to be mere chattels. This practice ended with the introduction of Islam in approximately 500 AD.

The teachings of the Qur’an established that women did have the right to inherit, and prescribed shares based on the different responsibilities assigned to male and female members of the household at that time. Unfortunately, however, inherent in a lesser share is the perception of inferiority — if women are given less, they must be worth less than men. This has lead to a very negative situation for women. To remedy it, the prescription of shares should change with the changing times: now that women are responsible for, and contribute to, household expenses, they also need a larger inheritance share.

Islam is flexible and we should not limit ourselves to certain interpretations. We can take from people who work on the jurisprudence the best for society.\textsuperscript{545}

How do they introduce progress into their societies, while at the same time protecting their deep-seated spiritual beliefs and cultural identities, two valuable foundations that colonialism tried unsuccessfully to destroy? How can they benefit from the Western experience, including its recognition of the legitimate rights of women, without inadvertently destroying their highly valued familial ties? In this context, the experience of those North American Muslims who have successfully integrated their religious beliefs and ethnic heritage with the American and Canadian ways of life becomes very valuable. It is a living proof of the fact that Islam is not a mere ‘Oriental’ religion, but a world religion which is capable of meeting the needs of Muslims in all historical eras and all geographical locations.\textsuperscript{546}

\textsuperscript{544} Kamguian, ‘Islam and the Liberation of Women in the Middle East’ (n. 460 above).
\textsuperscript{545} Nawaal Fouri, religious expert and feminist, statement made during COHRE workshop on Inheritance Rights as Human Rights in the Middle East, 14-16 Feb. 2005, Amman, Jordan.
The European colonisers of sub-Saharan Africa, by codifying into customary law a number of concepts that embodied gender inequality, striped the traditions of much of their inherently fluid and reactive nature and superimposed the patriarchal values that they had brought with them from Europe. In effect, they codified women into inferior positions — especially with regard to property ownership and inheritance. This was to the great detriment of women. The period of manipulative colonialist interference with the indigenous system, coupled with the desire to impose at least some sort of fixed ‘law’ on indigenous peoples, led to the stagnation of customary law.

Customary and religious law have stagnated, as have their interpretation and application; they seem unresponsive to social trends. Rather than reflecting the changing needs of women in rapidly transforming societies, both these types of law are increasingly implemented in ways that deny women their basic rights while enhancing male privilege.

Customary and religious law should be ‘living’ and adaptable in their application to the daily affairs of communities and individuals. Indeed, in essence they are well suited to such flexibility. Unfortunately, however, those in positions of authority do not seem to recognise the need for re-evaluation and change. Instead, patriarchal leaders and systems enforce rigid and dogmatic adherence to the ‘official’ version; any call for re-thinking the basic tenets of the law is condemned as blasphemy or an affront to tradition.

As this publication has shown, there is great danger – especially for women – in tying law to custom and religion, in applying human interpretations of ‘the will of the ancestors’ or ‘the divine word’. Rather than deriving statutory law from customary or religious systems, would it not be better to integrate their tenets into broader legal principles?

Many argue that law must avoid integrating that which is even remotely religious, that secularism is the only answer. However, even its most radical proponents do not see the secularisation of law in Islamic countries as a realistic possibility.

Progress towards liberal democracy with respect for international human rights in the Muslim world will depend on the radical and critical reappraisal of the dogmatic foundations of Islam, rigorous self-criticism that eschews comforting delusions of a glorious past, of a Golden Age of total Muslim victory in all spheres; the separation of religion and state and the adoption of secularism. But secularism will never be adopted as long as it is seen as a Western ‘disease’, until the Muslim world has laid aside its unjustified, irrational, and ultimately destructive fear and loathing of the West and comes to a just recognition of the West’s true values, and to a deep understanding of the philosophical foundations of liberalism and democracy; and what the West has already taught it, and what it can still teach it.547

Yet secularism has been rather successful in defining formal law in countries such as Indonesia, Malaysia and Turkey. The key question in the context of the theme of this publication is whether this secularism has made things better for women. As shown by Subsection 2.8, above, this is certainly not the case in Turkey, where, despite secular legal reforms, the reality for women is still one of subservience to patriarchy.

Secularism is not a universal concept and, arguably, is very difficult to implement within a system in which religion is so deeply ingrained as in Muslim countries.

Concerning secularism (separation of church and state), there was acknowledgement that the concept is not universal. For example, given that there is no clergy as such in Islam there is no institutional way to separate it from the state. Also, in Muslim and other societies, secularism is presented as anti-religion or equated with atheism. The issue should be formulated in some contexts as the separation of political functions from religious ones (for example, religious leaders not using mosques for political purposes and the state not using religion for political reasons).

Custom and religion themselves cannot be blamed for subverting women’s rights; a complex mix of human and societal factors has led to the present situation.

Perhaps the way to redress the present injustices and imbalances is to establish a system of law that is a synthesis of fundamental human rights principles with the true core teachings and tenets of custom and religion — a revival of all that is valid and good within them. The yardstick of validity and goodness is human rights, so fundamental human rights principles such as gender equality and non-discrimination must be the cornerstone of any such system. Furthermore, for such a system to be pertinent and ‘living’, the rules derived from the customary and religious teachings and tenets to which it ascribes must be able to reflect day-to-day realities.

Religion is values and treatment, but that has been lost. It is now used as an excuse for other things — for denying our rights.

Custom and religion must no longer be misused to cloak or justify violations of women’s human rights.

4.6.5 Universality of human rights v. cultural relativism

Many influential voices in non-Western countries have condemned equal inheritance rights – along with all other international human rights – as being contrary to their own cherished culture, as an alien Western construct. They claim that the concept of ‘cultural relativism’ protects their rights to conduct or condone actions that outsiders may consider to be in violation of human rights. They do not feel that they must abide by a system of law imposed by a foreign autocracy.

Cultural relativism is a means of discovering fundamental truths about our humanity, while taking account of, and respecting, the various cultures that exist in the world. Cultural relativism has often been misinterpreted as meaning that all cultures are separate yet equal, and that all value systems, however different, are equally valid. Cultural relativism emphasises the importance of the local context in understanding the significance of particular human beliefs and activities, yet it should not be used to perpetuate or justify non-adherence to, or violations of, human rights.

If all people could truly understand and accept that human rights are universal and equally applicable to everyone, everywhere, regardless of sex or gender, this would signal the end of the discriminatory systems that are so ingrained in modern societies. This requires not only that men accept such equal rights, but that women actively claim them. It must be recognised that the applicability of human rights extends far beyond the public sphere to the household, familial and individual levels. As such, they must be respected and protected at those levels. First and foremost, though, it must be understood that existing systems of customary, religious and societal norms can be and need to be adjusted so that human rights can prevail.

548 ‘Fundamentalisms and Human Rights’ (n. 543 above).
The continuing misinterpretation and misapplication of customary and religious laws prevents them from being used to promote equality and human rights for women. All forms of fundamentalism and traditionalism, or strict adherence to patriarchal distortions of custom and religion, lead to discrimination against women. Human rights are universal and not culturally bound or relative. They transcend all cultural, societal, political and religious systems and apply to each and every man, woman and child by simple virtue of their common humanity.

Modern advocates of human rights claim at least three things:

1. That these rights are fundamental in the sense that without them there could not be any of the specific rights that are grounded in the specific social circumstances in which individuals live;
2. That just these rights cannot be relinquished, transferred, or forfeited (that is, they cannot be alienated from them by anything that they or anyone else may do), since;
3. They are rights that human beings have simply because they are human beings, and quite independently of their varying social circumstances and degrees of merit.\\n
Customary and/or religious law and human rights, rather than being mutually exclusive, can actually complement and inform each other. Those values enshrined in customary and religious law that do promote dignity, security and equality for all already embody, or at least are compatible with, human rights principles. Those aspects of customary and religious law – and practice – that do not promote dignity, security and equality for all must be brought into line with the core principles of human rights.

Human rights principles can and should be integrated with customary and religious law without discarding the good values and doctrines that underlie such law, in a way that is meaningful and relevant in diverse contexts. Rather than limit human rights to suit a given culture or religion, why not draw on traditional and religious values to reinforce the application and relevance of universal human rights? There is an increasingly urgent need to emphasise the common, core values shared by all cultures and religions: the value of life, social order, and protection from arbitrary rule.

In addressing religion-based and traditional norms, a holistic approach is clearly essential. Human rights advocates need to appreciate that all cultures have positive and negative attributes; they should not accept narrow interpretations of culture and religion whereby women’s inferior position is somehow justified. They must work together to maintain cultural and religious identity and diversity, while upholding the essential human dignity of all women, and of all men, on the basis of equality.

Culture is not some static body of practices handed down intact over the generations but is changing, contested, and practised differently at different times by different people in different places. This is why generations of elders have consistently complained about the manners and mores of the younger generation.\\n
Defenders of individual women’s rights have been accused of affronting culture and religion. However, situations and attitudes change, as should the rules by which people live their lives. It would be misdirected outrage to say that custom and religion should be discarded. Yet, in order for culture and tradition to work in women’s favour, women must be allowed to define them for themselves: to redefine the pervasive negative attitudes as positive ones, and to claim their rights because of, not in spite of, culture and tradition.

\textsuperscript{550} Kamguian, 	extit{Is Islam Compatible with Democracy and Human Rights?} (n. 530 above).

In bold terms, the *Summit Declaration on Inheritance Rights as Human Rights* urges States:

... to ensure the eradication of all harmful customary and religious practices, and to ensure that the practice of culture and religion is in harmony with the realization of women's rights to equality and non-discrimination.

Human rights are not merely a set of laws and standards but rather a ‘voice’. Human rights ‘must be lived’ and be relevant to everyone’s lives — they should not be seen as a technical exercise. In this respect, human rights can and must play a critical role in ensuring that custom, religion and culture are interpreted and applied in a way that fosters women’s equality and non-discrimination. The human right to freedom of expression, as well as education and many other factors, play a critical role in ensuring that culture and religion provide space for a diversity of views and opinions, including an open dialogue on human rights. The human rights of equality and non-discrimination must be at the basis of all interpretation and application of culture and religion. Finally, the human rights to dignity and to housing and land for all must guide any determination of how culture and religion affect women.

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The *Summit Declaration on Inheritance Rights as Human Rights* arose from the COHRE-sponsored Summit on Inheritance Rights as Human Rights, held from 3 to 5 April 2005 in Geneva, Switzerland, during the 61st Session of the UN Commission on Human Rights. It was the first meeting between MENA and African women’s rights activists on the topic of inheritance rights as human rights. For further information, visit www.cohre.org/women.

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STRATEGIES AND SOLUTIONS
The protection of inheritance rights will ultimately require a range of conduct from various stakeholders, beginning of course with women themselves. Women must fight for and reactivate the law on a personal level and ensure the application of it within their own families. Civil society and NGOs must work to increase awareness of rights, States must fulfil their obligations under national and international human rights law, and international organisations and the UN must assist States in this effort and pressure them to comply with their international human rights obligations. It is a cycle of many working together towards the proper application of human rights for women.  

A human-rights-based approach to inheritance, taking account of the interdependence of all human rights, provides a broad framework for examining the true consequences of the denial of inheritance to women and for determining the best strategies to address those consequences.

It is clear that the customary and religious legal systems of the Middle East and North Africa (MENA) and sub-Saharan Africa must be reconciled with women's human rights. Several organisations inside and outside those regions are engaged in such work, formulating and coordinating strategies to ensure that women's human rights become a reality as soon as possible.

In order to provide a background for the strategies presented in subsequent subsections (5.2-5.4), this section begins with a review of the essentials of human-rights-based law. Innovative ideas for change within the framework of the Shari'a are then presented, with a special subsection on *ijtihad* (the rethinking and revision of Islam-inspired law) and how this process may be utilised to improve the situation of women's rights. Finally, various strategies that are already being implemented by COHRE's partners in the MENA region are examined, and a brief guide to utilising the UN system is provided.

In presenting these ideas and strategies, this section aims not only to inform readers but to inspire them to action.

### 5.1 ESSENTIALS OF HUMAN-RIGHTS-BASED LAW

International human rights law obligates States Parties to provide real protections for the most vulnerable members of society, including women and girls. Hence, States are also obligated to assess all customs, traditions and laws under their jurisdiction, as well as their impact on citizens, in order to verify that they conform with basic principles of equality and non-discrimination. Any custom, tradition or law that is found to be in violation of those principles must be changed.

Thus, States have an essential duty to protect women and girls from gender-based discrimination and to change customs, traditions and laws that degrade their status below that of their male counterparts.

The principle of non-discrimination embraces the non-homogeneity of women; in other words, it recognises that not all women are the same, and that discrimination against them is due to a variety of factors. Any attempt to redress such discrimination must therefore take all these factors into consideration.

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553 Zeina Mohanna, human rights activist, Foundation for Human and Humanitarian Rights, Lebanon, statement made during the COHRE-sponsored Summit on Inheritance Rights as Human Rights, 3-5 Apr. 2006, Geneva, Switzerland (see n. 552 above).
Morocco’s 1996 Constitution, like the version it superseded, does not contain a provision explicitly prohibiting discrimination against women. Although it states, in Article 5, that all Moroccans are equal before the law, it fails to address non-discrimination. By omission, the inference is that the guarantee of equality in Article 5 is restricted: the Constitution indirectly allows for the unequal treatment of women in the sphere of personal status. Consequently, Moroccan ulema (Islamic scholars/leaders who act as arbiters of the Shari’a) are given free rein to assert that the personal status laws do not violate the constitutional guarantee of equality, and discrimination against women continues unchecked. Clearly, constitutions must explicitly provide not only for equality but also for non-discrimination on all grounds, including sex.

The right to equality is the most basic tenet of international human rights and also, probably, the most violated. States are obligated to take positive steps to ensure not just de jure, but de facto equality. In other words, it is not enough that women be given equal rights in law — the equality must be experienced by all women in concrete ways in their lives. As the Montreal Principles on Women’s Economic, Cultural and Social Rights state: “The adequacy of conduct undertaken to implement rights must always be assessed against the background of women’s actual conditions and evaluated in the light of the effects of policies, laws and practices on those conditions.”

The right to self-determination entitles all to the integrity and autonomy of self-development. Like the principle of non-discrimination, the principle of self-determination recognises that women are not a homogeneous group, and that a woman should experience rights not only by virtue of her being the wife, daughter or mother of a man. She is to realise her rights to housing and land simply because she is a human being — like any other independent entity bearing rights.

States are obligated to advocate and adequately implement laws that protect women’s rights. Such legal protections for genuine equality and non-discrimination take precedence over law and practice based on customs, traditions and religious doctrine, and States should make their citizens aware of this fact.

Sensitisation and awareness-raising programmes are of crucial importance and must have the effect of enhancing women’s sense of self-worth and making all women and men familiar with women’s rights to equality and non-discrimination in all areas, including inheritance.

International human rights standards can, and should, be invoked within national courts to strengthen arguments that women have a human right to non-discrimination and thus to equal inheritance rights. When States are involved in court proceedings, they should promote interpretations of domestic law that, as far as possible, conform with, and give effect to, their obligations under international human rights law. Thus, when a domestic decision-maker is faced with a choice between an interpretation of domestic law that would place the State in breach of its international human rights obligations and one that would enable it to comply with those obligations, international law requires that the latter be chosen.

The international obligations to respect, protect, fulfil and promote women’s economic, social and cultural rights, including the right to equal inheritance, require a range of conduct from States; that is, negative and positive action. For example, States are obliged to refrain from harmful treatment and, at the same time, to take steps to advance women’s equality. In the event of an infringement of the right to non-discrimination or the right to equal enjoyment of women’s economic, social and cultural rights, States are required to provide one or more appropriate remedies. The State has a related obligation to ensure that any such remedy is not only ordered but also effectively implemented.

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554 Information based on COHRE fact-finding mission (Dec. 2002) and subsequent internal report on housing situation in Morocco.
555 Montreal Principles on Women’s Economic, Cultural and Social Rights (n. 535 above), para. 9, ‘Substantive Equality’.
**Public sphere** – States are required to repeal laws and policies that discriminate either directly or indirectly. They are also required to guarantee women’s rights to non-discrimination and to the equal exercise and enjoyment of economic, social and cultural rights in appropriate domestic laws, such as national constitutions and human rights legislation, and in the interpretation of customary and personal laws.

**Private sphere** – States are obligated to regulate the conduct of third parties, such as employers, landlords and service providers. States are also obligated to design and implement policies and programmes to give long-term and full effect to women’s economic, social and cultural rights. These may include the adoption of temporary special measures to accelerate women’s equal enjoyment of their rights, gender audits, and gender-specific allocation of resources.

### 5.2 STRATEGIES BASED ON HUMAN RIGHTS

A comprehensive human-rights-based approach to violations of housing rights, focusing on the right to adequate housing, is a powerful tool in the fight for inheritance rights. It addresses several areas that relate to housing and land rights: customs, laws, administration and adjudication systems, economics, family and community relations, and, to some extent, social perceptions.

It is always advisable, if not essential, first to take a human-rights-based approach within the system that is in place, rather than trying to create a new system that may not be accepted. In the context of the MENA region, the best place to start taking such an approach towards effecting change in women’s lives is within the context of religion-based personal status law, or the Shari’a itself.

#### 5.2.1 Emphasising human rights within the Shari’a

One may argue that in the absence of a complete application of Islamic law, where the rights of women will have no teeth, Muslims should turn to the spirit of that law, which is justice, and find ways to accomplish this goal. ... Muslim scholars, legislators and researchers must – and are beginning to – boldly address this issue to focus on these challenges. The Islamic laws of inheritance are, like all issues in Islamic law, a dynamic process that must respond to the many challenges and opportunities that world changes present.556

As reiterated in several previous instances in this publication, it is neither possible nor necessary to abolish the system of Islam-inspired law as it now stands. Rather, it is important to emphasise and utilise those aspects of it that are consistent with international human rights law. Some experts and activists argue that this process will require a re-interpretation of certain laws; others indicate the need to re-activate certain laws in their original spirit. It will also be necessary to critically examine situations that occur in the name of the religion yet are contrary to its true principles and should therefore be redressed.

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556 Muslim Women’s League (a non-profit American Muslim organisation working to implement the values of Islam), ‘Islamic Inheritance’, [http://www.mwiusa.org/publications/positionpapers/inheritance.html](http://www.mwiusa.org/publications/positionpapers/inheritance.html)
5.2.1.1 *Ijtihad* — an expert’s view on jurisprudential change

The modernist movement in Islam has opposed the traditional view of Shari’a stating that the law cannot be changed by man, insisting that it should be applied to the actual situation and new ideas, meaning that new interpretations are allowed.\(^{557}\)

Some religious leaders and many women’s rights activists and organisations argue that changes to the Shari’a are not only warranted but necessary in order to make Islam more attuned to the changed social context of these modern times, especially because many women are now educated, economically active and responsible. Some modern scholars of Islam deem such changes acceptable under Shari’a rules, in fulfilment of *ijtihad*, which is the re-thinking or re-interpretation of Islamic legal sources, including scripture, on the basis of reason.

The textbox below is the thinking of one such scholar, Professor Abdelkarim Khamlichi, an expert and lecturer on Islam-inspired law who is attached to Mohamed V University, Rabat, and the Association Démocratique des Femmes du Maroc (ADFM). He is well-versed in the Qur’an and the Shari’a and insists that the latter is ripe for change, for *ijtihad*.

**THE TIME FOR *IJTIHAD***\(^{558}\)

*Ijtihad* is the intellectual challenging and re-interpreting of Islamic jurisprudence. This process could lead to the re-thinking of laws to provide for greater realisation of rights for women, whether concerning inheritance or their situation within the family in general. It is by distinguishing the true Shari’a from often patriarchal interpretations, and by reading the detailed rules in the light of the true principles of the Qur’an, that a positive evolution of inheritance laws may be achieved.

**LINKING DETAILED CLAUSES TO GENERAL PRINCIPLES OF THE QUR’AN**

The Qur’an contains an elaborate set of rules on family, but interpreting (and applying) these rules is subject to two conditions: (1) deferment to general fundamental principles within the Qur’an; and (2) consideration of the concept of *ma’ruf* (that which people are accustomed to and accept as proper), which calls for flexible interpretations.

There are two general sets of principles within the Qur’an that are to be considered: those governing all general transactions, and those governing the status of women and family relations. Concerning the former, on general transactions, we may refer to the following verses, for example:

“Allah desires ease for you, and He does not desire for you difficulty.” (*Surah Al-Baqarah*, verse 185)

“Say: My Lord has only prohibited indecencies, those of them that are apparent as well as those that are concealed, and sin and rebellion without justice.” (*Surah Al-Araf*, verse 33)

“Surely Allah enjoins the doing of justice and the doing of good (to others) and the giving to the kindred, and He forbids indecency and evil and rebellion; He admonishes you that you may be mindful.” (*Al-Nahl*, verse 90)

“And your Lord does not deal unjustly with anyone.” (*Al-Kahf*, verse 49)

“He has chosen you and has not laid upon you any hardship in religion.” (*Al-Hajj*, verse 78)

\(^{557}\) Encyclopaedia of the Orient (online), ‘Shari’a’, [http://i-cias.com/e.o/sharia.htm](http://i-cias.com/e.o/sharia.htm) [accessed 12 Sept. 2005].

\(^{558}\) This entire textbox was prepared and written solely by Professor Khamlichi. It has been translated and edited for inclusion in this publication.
With regard to those principles governing the status of women within the family, the following are important:

“And when you have divorced women and they have ended ... their term (of waiting), then do not prevent them from marrying their husbands when they agree among themselves in a lawful manner.” (Surah 2, verse 232).

“And (as for) those of you who die and leave wives behind, they should keep themselves in waiting for four months and ten days; then when they have fully attained their term, there is no blame on you for what they do for themselves in a lawful manner.” (Surah 2, verse 234)

“... And do not injure them in order that you may straiten them.” (Surah 65, verse 6).

“Divorce may be (pronounced) twice, then keep (them) in good fellowship or let (them) go with kindness.” (Surah 2, verse 229)

“... And they [women] have rights similar to those against them in a just manner, and the men are a degree above them.” (Surah 2, verse 228)

“... They are an apparel for you and you are an apparel for them.” (Surah 2, verse 187)

“Men shall have a portion of what the parents and the near relatives leave, and women shall have a portion of what the parents and the near relatives leave, whether there is little or much of it; a stated portion.” (Surah 4, verse 7)

“... Bequest is prescribed for you when death approaches one of you, if he leaves behind wealth for parents and near relatives, according to usage.” (Surah 2, verse 180)

We can conclude from these verses that protection, equality and justice for women are general principles that should be considered when devising and interpreting detailed rules governing family relations.

Furthermore, verses relating to the status of women within the family are associated with the concept of *ma’ruf*, or that which ‘people are accustomed to and accept as proper’. This concept is referred to 20 times in the Qur’an.

It cannot be disputed that those norms and behaviours that ‘people are accustomed to and accept as proper’ are constantly in flux. Therefore, the interpretation of rules related to the status of women within the family should be constantly reconsidered and renewed.

**CONFUSING THE SHARI’A WITH ISLAMIC JURISPRUDENCE**

One of the main problems that affect jurisprudential review and thinking is the failure to distinguish between the Shari’ā and Islamic jurisprudence, or *fiqh*. In fact, they are quite different: the Shari’ā is textual stipulation based on the Qur’an and the true Sunnah (the words and deeds of the Prophet), whereas *fiqh* is the human interpretation of these two sources. Interpretations are subject to cultural and social values prevailing in society at the time of their formulation, and thus cannot be considered unalterable. These cultural and social values weigh most heavily on the interpretation of laws that relate to the status of women.

A great number of jurisprudentially deduced rules relating to women’s rights have been mistakenly considered a constant and integral part of the Shari’ā. As such, many people have considered them sacred and immutable, rendering such interpretations stagnant. In reality, however, they are merely human interpretations that are subject to cultural and social traditions and, and therefore, are also liable to change.
Among the rules that have been mistakenly considered as sacred and immutable, the following are noteworthy:

- **Guardianship of women in marriage**: Despite the absence of an explicit text to this effect in the Shari’ah, the father is sometimes attributed the authority to force his daughter to marry a man she does not like.
- **Husband’s total authority over the marital home and family**: The paternal affiliation of a child born out of wedlock is never recognised; instead, the maternal affiliation is recognised.
- **Inheritance through ta’ssib** (a practised form of inheritance whereby only males benefit).
- **The prohibition of a bequest in favour of an heir** (based on a hadith).

These and other similar rules are actually jurisprudential deductions clearly influenced by cultural and social traditions: they have been integrated into the Shari’ah and are considered immutable. However, it is clear from a study of their origins that they are human interpretations, and therefore are not infallible and are open to questioning.

An affirmation of the distinction between the Shari’ah and Islamic jurisprudence (fiqh), and of the distinction between the (divine) fundamental principles of the Qur’an and those (interpreted) rules that govern details, would truly open the way to challenging opinions in the field of women’s rights; in particular, those related to inheritance.

**IJTIHAD IN INHERITANCE ISSUES**

An analysis of the inheritance system is crucial to determining the grounds for the distinction between men and women, so as to proceed further in a positive evolutionary interpretation of related texts.

In fact, the Qur’an does not consistently adopt the principle of “a male shall inherit twice as much as a female”, but it mentions two exceptional cases relating to the parents and the uterine brothers and sisters. The first case concerns the mother and the father (it is the same for the grandfather and grandmother), who each inherit one sixth of the property of their deceased son or grandson if he has children. The second case concerns uterine brothers and sisters, each of whom – male or female – inherits one sixth of the estate; and if they are numerous, they receive equal shares in one third of the estate (a male gets the same share as a female).

Ijtihad (the rethinking of Islamic jurisprudence) on inheritance requires, firstly, determining the reasons for the inequality between the male and the female in the stipulations of the Qur’an. A reinterpretation of those reasons should lead to a reinterpretation of the conclusions previously reached. This is a jurisprudential principle in itself: the reasons for the conclusion that was reached influence both the existence of the conclusions and the elimination thereof.

Thus, if females are discriminated against because men have been mandated to act as financial guardians over women, and if men lose their financial guardianship over women because they no longer need such guardians, because the women themselves are economically active, it follows that this justification can no longer stand. Once this justification is no longer supportable (because the conditions no longer exist), equality between men and women should be adopted.

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559 Such a concept has been derived in spite of a clear text in the Qur’an which decrees that property shall be bequeathed equitably to parents and kindred, as a duty incumbent on all the righteous.

560 “Parents shall inherit a sixth each, if the deceased have a child.” (Surah 4, verse 11)

561 “If a man or a woman leave no children nor parents and have a brother or a sister they shall each inherit one-sixth. If there be more they shall equally share the third of the estate ….” (Surah 4, verse 12).

562 “The prescription in the Qur’an requiring men’s guardianship over women is a stipulation subject to changing requirements. To jurists, the reason behind the smallness of the woman’s share of inheritance as compared to that of the man is the man’s guardianship over the woman. Today, we observe that men have no such duty, for women are financially independent of men: they are educated and they work, consequently they (women) have become responsible for their own material needs. More important is the fact that, today, women contribute to the financial support of the family and sometimes assume sole and full responsibility in this regard. Therefore, the original reason for the smallness of a women’s share of inheritance no longer exists. It follows from the abovementioned jurisprudential principle that there should be a change in the conclusion as a result of the change in the ground, namely, equality between the sexes in inheritance”. Ahmad Kazemi Moussavi (ed.), Guide to Equality in the Family in the Maghreb (0) (Collectif 95 Maghreb Égalité, 2005), p. 151.
THE RIGHT OF KADD AND SI’AYA

A traditional financial right of women called ‘the right of kadd and si’aya’ (gaining from labour to provide for livelihood) is practised in some regions of Morocco, especially in the southern city of Susse. It is the right of the wife over the wealth she has created and produced, along with her husband, during the period of marriage. In most cases, the wife contributes directly or indirectly to building up the ‘wealth of the husband’. Therefore, she should benefit from this wealth in addition to obtaining her normal share of inheritance (one quarter or one eighth) as stipulated in the Family Code of Morocco [Moudawana, see Subsections 2.5.2.2 and 2.5.3.1, above].

Some jurists have adopted this right, and several judgments of the Moroccan Supreme Council (the highest religious court in the country) have supported the right of si’aya in granting housing and other property. Such cases support the idea that if a woman is found to have contributed to the building up of the marital estate, then she should be allowed to share significantly in the real property of that estate. Significant is the judgment by the Court of Appeal of Rabat, in 2000, which held that:

“... The woman’s kadd and si’aya (labouring to earn a living), whether in the countryside or in the city, and the money so earned exceed her personal needs and contributed to the building up of the material wealth acquired during conjugal life or to its expansion. For this reason, the way in which this wealth is acquired becomes a ground for its common ownership: the actions of man and wife are associated and no rule shall apply to one that would not apply to the other. So a return to principle is necessary, and the principle is the independent financial responsibility of each individual in Islam and equality between men and women in most material and spiritual affairs, inasmuch as Islam has given each of them the right to own the share resulting from his/her work and action, as the Almighty says in His book [the Qur’an]: ‘Men shall benefit from what they earned, and women shall benefit from what they earned’.”

Clearly, such cases pave the way for re-interpretation of the strictly applied rule of inheritance.

AN EXAMPLE ILLUSTRATING THAT CHANGE IS POSSIBLE

According to Maliki jurisprudence, a child whose father dies before her/his grandfather does will inherit nothing if she/he has an uncle.

In reality, many orphaned children were found to be vulnerable after their grandfather’s death, not having previously inherited from their deceased father. Thus, society called for the law to change so that children could inherit from their father, irrespective of the existence of an uncle. This law has been changed through the so-called ‘obligatory bequest’. This bequest is a legal obligation.

Thus, Morocco’s Personal Status Code of 1957 was amended to stipulate that the person who dies leaving grandchildren from a predeceased son must bequeath one third of his estate in favour of these grandchildren, in the limits of the defined amount and conditions.\textsuperscript{565}

\textsuperscript{563} a) Decision of the Supreme Council in Case No. 117, 12 May 1980: “Then the decision of the Court of Appeal to grant one third of the house to the secondary appellant as her share in Si’aya is, according to the expert report, logical and in conformity with the customary practice in Susse, for there is no evidence to the existence of any other interested party than the appellant and the secondary appellant with regard to the house (which is the) subject of Si’aya”.\textsuperscript{564}

b) Decision of the Supreme Council in Case No. 89/8746, 08 Apr. 1991: “Whereas the court learnt from studying the file relating to the claim to the right of Si’aya and kadd in the contested apartment that the claimant has not provided any evidence to support her claim to a right in the apartment in question, and that the claim to Si’aya is based only on statements, the court cannot uphold the claimant’s right to Si’aya.”

c) Decision of the Court of Appeal under No. 58/885, 04 Nov. 1985: “… the right called Si’aya and kadd in certain traditions is considered as a right recognized by Islamic jurisprudence on the basis of the practice founded by Omar Ibn Khetab, who decided to grant Habiba Bint Al-Argham half of her husband’s estate in spite of her brother in law’s opposite claim, on the basis that she was a weaver and embroiderer, which implies that she had contributed in building up the estate.”

\textsuperscript{564} Court of Appeal of Rabat, under No. 99/6323, 04 Apr. 2000.

\textsuperscript{565} Art. 266 and subsequent provisions of the Personal Status Code of 1957.
Despite the positive implication of this amendment of the Code, it remained incomplete, as it excluded the predeceased daughter’s children. This drawback has been eliminated in the new Family Code of 2004, in that the children of the daughter, like the children of the son, have now been given the right to receive a share in the grandfather’s estate.

The adoption of the ‘obligatory bequest’ mechanism, whether in the old or the new Code, raises some key observations:

Firstly, this modification is of symbolic importance: although it represents only a minor change to inheritance laws, it challenges the prevailing perception that the prescribed rules of inheritance are sacred and immutable. This reform proves that even in the domain of inheritance, there is a possibility of resorting to *ijtihad*.

Secondly, this *ijtihad* (the rethinking and revision of Islam-inspired law) is in harmony with the following verse of the *Qur’an*: “It is decreed that when death approaches, those of you that leave property shall bequeath it equitably to parents and kindred. This is a duty incumbent on the righteous.” (Surah 2, verse 180)

Thirdly, the obligatory bequest is now equally distributed among those with the same degree of kinship to the deceased, regardless of whether they be males and females. This is a key change.

Finally, this reform opens the door to *ijtihad* favourable to equal inheritance rights for women in all circumstances. The adoption of the obligatory bequest in favour of the grandchildren was solely based on a social concern. Consequently, the invocation of the aforementioned verse of the *Qur’an* can be envisaged whenever a similar interest arises, such as that relating to the rights of the wife, children and parents whose breadwinner has died.

**THE REALITY THAT MUST BE ADDRESSED**

National statistics in Morocco show that 16 percent of all households are headed by single females (19 percent in cities and 12 percent in the countryside). Of these female-headed households, 71 percent of the females are either divorced or widowed. The majority of these women are illiterate, and not economically successful.

In such conditions, where many women are deprived of stable sources of income, economic independence and favourable circumstances for raising children, can one say that the true fundamental verses of the *Qur’an* that were cited above are being applied? Should women (whether divorced or widowed), orphans and parents not be given priority in receiving whatever amount of the deceased property exceeds their predetermined shares in the estate — or should others come before them? The answer is clear: surviving women and orphans should not only receive the share due to them under the *Shari’a* but must be given more, based on their contributions to the household and the needs that they may have. This is a social concern that should be reflected in the law, so that women and orphans are no longer plunged into destitution.


5.2.1.2 ‘Reactivation’ of Islamic teachings that protect women

During the COHRE fact-finding mission to Jordan, Kuwait, Tunisia and Turkey in 2004 (see Subsection 5.2.3.1, below), the Women and Housing Rights Programme (WHRP) spoke with many women who called for a ‘reactivation’ or ‘revitalisation’ of Islamic teachings in favour of women’s rights. They argued that the true teachings of ‘equal treatment and respect for all’ found in the Qur’an and the Shari’a have been lost; that Muslim women are not supposed to face the discrimination they face today — for according to the Qur’an, women and men are made equal. The interviewees were convinced that women are meant to retain and benefit from their rightful share of inheritance, not to have it stolen, as so often happens these days. They insisted that the Shari’a really teaches that if women are earning for, and contributing to, the household, they should receive what is fair. Many women called for: (1) a renaissance of laws and teachings based on the upholding and protection of women’s rights; (2) clarification of, and education in, the true laws based on the fundamental principles of the Qur’an; and (3) extolling of the virtues of Islam — rather than condoning of the discriminatory aspects of its practice.

We have the laws, but how are they applied? It is not religious to take elderly people and beat them up to get their inheritance. The laws are not applied properly — all that is good in the law has been lost. The truth of the Shari’a and the Qur’an, that they protect women, has been lost and must be reactivated.

Many women interviewees argued that religious leaders in particular, but also government and civil society, must play a role in this reactivation. The mass media also have a very important role to play in sending out the right messages. The educational system must teach equality and non-discrimination as being fundamental to the Qur’an, women’s rights, and human rights in general.

There has been a campaign for immunisation, there should be a campaign on inheritance. Illiteracy problems can be solved through the use of TV, which is understood by all, especially by poor people who cannot read.

Many women suggested that government should begin a campaign for inheritance based on the real laws of the Shari’a. People must be encouraged to read the Qur’an again, to discover its real meaning, to reveal the passages that promote equality and non-discrimination for women.

Participants at COHRE’s inheritance rights workshop in Amman, Jordan, Feb. 2005, representing regional NGOs that work for the realisation of women’s housing, land and inheritance rights.

This sentiment was heard repeatedly during COHRE’s fact-finding mission of Sept. 2004. Women in Mafraq and Madaba, Jordan, who were interviewed from 25 to 27 Sept., were the most vocal in expressing this view.

COHRE interview with Yasmin, a women’s rights activist, 27 Sept. 2004, Mafraq, Jordan.

5.2.1.3 Ensuring that courts proactively protect women

Family members often persuade – or even coerce – a woman to give up her rightful share of inheritance. When a woman agrees to do so, her family may force her to go to court to make the relinquishment legal and irrevocable. Under rules derived from the Shari’a, there are two ways to give up inheritance in the courts: either by relinquishing the inheriting of personal effects, or by relinquishing all inheritance.

A major problem is that clerks and judges often do not properly inform the woman in question that she is about to sign an agreement to give up all inheritance; she thinks she is merely relinquishing something personal.

There is a need to make women aware that there are two kinds of relinquishment with totally different consequences. Also, the forms that have to be filled in should be explained properly — many women are confused by all the paperwork and complete the wrong forms, with the result that they lose all their inheritance. In such situations, clerks and judges do not intervene appropriately. A system should be put in place whereby women are privately counselled by the judge or a clerk of the court on the two different types of relinquishment and their consequences.

5.2.1.4 Unequal shares not justified under Shari’a

The modern reality is that many women in MENA States work and earn money that is fed into the household. Indeed, Tunisia’s Personal Status Code stipulates that “the woman must contribute to the expenses of the family if she has property.” Nevertheless, outdated notions of the husband’s supremacy and male maintenance of females still prevail.

The belief that the man is mandated to maintain his wife, sister or mother is normally used to justify his receiving a larger share of inheritance. By corollary, however, if there is no need for such maintenance because the woman in question is able to pay and care for herself, then there is no longer any justification for his larger share. If the woman contributes to the family expenses, as stipulated by Tunisia’s Personal Status Code, then the husband is released from his obligation to maintain her and therefore does not need a larger inheritance share. Yet according to the status quo, men continue to receive the lion’s share. It is clear that the laws of maintenance and inheritance must be reformed to reflect the realities of women’s contribution to the home.

5.2.2 Advocacy and other strategies from around the MENA region

From the numerous obstacles facing the women of the MENA region today it is clear that they can only realise their inheritance rights through creative, multi-pronged yet holistic advocacy and strategies. Changes are gradually materialising, largely due to the efforts of dedicated and vociferous women’s groups and other organisations in the region.

These organisations have developed a range of effective strategies for raising people’s awareness of inheritance issues and challenging discriminatory attitudes, practices and laws. Their methods include training, advocacy and capacity-building. The ultimate objective is to improve women’s realisation of their economic, social and cultural rights in general, and their rights to inheritance, housing and land in particular.

The following subsection highlights some ‘best practices’ in combating injustices that arise when the human rights of women are not respected.

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572 Some MENA States, including Morocco, Tunisia, and Turkey, have acknowledged women’s contribution to the household in marital property regimes, but these need to be adequately enforced. Other States should follow this lead.
5.2.2.1 Raising awareness
Many inhabitants of the MENA region are unaware that women have rights, let alone equal rights. They include many women, who subscribe to the belief that they are lesser than men and therefore do not deserve to realise equal rights.

This often deeply ingrained belief is difficult to correct, for it is grounded in long-standing misinterpretations of Islam that the women themselves hold to be true and divine. The misinterpretation stems from the traditional patriarchy and male bias that is endemic in the MENA region, as examined in many previous instances in this publication (see, for example, Subsections 3.4 and 3.5).

CRITICAL THEATRE
One highly effective way of teaching women – and whole communities – about their rights is through drama. Several community centres in Jordan are using theatre in this way. Although the COHRE WHRP did not hear of any drama specifically on inheritance rights, an excellent example is a theatre group sponsored by Freedom House, Jordan, an NGO that promotes democratic initiatives. The group travels the country, often entering impoverished and conservative rural communities to present plays on the horrors of violence against women. The views of the audience are integrated through direct participation and role-play. This form of education directly addresses prevailing cultural attitudes; it is powerful, its effects are immediate and its impact is great.

Even in secular Turkey, whose laws provide for complete gender equality, at least on paper, inequalities and discrimination in inheritance and other areas of women’s lives are endemic, as illustrated by Subsection 2.8, above. The community-based organisation Ymece is trying to combat this discrimination by hosting community centres in various suburban areas outside Istanbul in order to reach women who are unable to come into the city for information and training. These centres also provide a much-needed space for women to come together and discuss their own issues — something that is often impossible in Turkish communities, due to the overarching patriarchal nature of the family.

In Egypt, the Cairo-based Centre for Egyptian Women's Legal Assistance (CEWLA), founded in 1995, has been fighting the entrenched discrimination that is so prevalent in Egyptian society. The organisation’s main mission is to support women in fulfilling their human rights. Among other activities, CEWLA offers educational courses and seminars to help redress women’s unawareness of their rights.

In 15 of Egypt’s 26 governorates, CEWLA trains leading women in the communities in women’s rights, as well as related international human rights law and treaties. To its training courses, CEWLA recently added a special session on inheritance rights and laws. This session has proven to be extremely useful, as it helps to determine the social and cultural obstacles that prevent women from attaining their inheritance rights. CEWLA believes that it is of paramount importance to educate women about the national laws that protect their inheritance rights, so that they can seek legal recourse when they face discrimination.

In Tunisia, the Association Tunisienne des Femmes Démocrates (ATFD) working in conjunction with the Tunisian Association of Women for Research on Development (AFTURD), has achieved even greater success with its media and public information campaign on inheritance rights — though not without a struggle. The joint campaign began in October 1999, with a petition that sparked off a public debate on the issue of inequalities in inheritance. The ATFD carefully gauged public reaction to this information in order to define and direct its further activities and strategies.

The ATFD/AFTURD’s most innovative strategy was to circulate a petition demanding reform of inheritance laws to better protect women’s rights. They accumulated thousands of signatures and in so doing raised public awareness of this issue.
The ATFD/AFTRUD campaign encountered the following resistance from the public:

- A hesitance to question inheritance as defined under Islam, as many see this as a challenge to the religion itself. Many also see it as a challenge to the traditional system of patrimony, whereby the head of the household is a man and that status entitles males to a greater share of inheritance than females.
- The perception that inheritance is a family matter to be kept within the private sphere, and should therefore not be the subject of public debate.
- A failure by many to see the relevance of the issue; in particular, because civil rights issues, such as freedoms and liberties, are considered to be more important.

The initial awareness-raising campaign evolved into the public debate stage, for which the ATFD linked up with the Tunisian League for Human Rights (LTDH), the largest and oldest national human rights group in the Arab world, to present a series of workshops around the country. From 2002 to 2003, these workshops enabled participating women’s rights organisations and other groups to critically analyse inheritance in the light of the social changes and family transformations experienced in Tunisia since its independence. The participants also engaged on issues of reform, formulating changes to law and practice. This campaigning by the ATFD and its partners has culminated in a publication analysing inheritance from the dawn of Islam to modern times, and addressing inheritance issues from various angles, including law, doctrine and practice. This publication will be widely disseminated in popular language throughout Tunisia to encourage further debate. (For further details, contact the ATFD.) The ongoing phase of the campaign involves research of how courts rule on inheritance matters, and the reality of inheritance practice in the Tunisian family.

**REGIONAL ADVOCACY**

The Tunis-based Arab Institute for Human Rights (AIHR) is an independent regional NGO founded in 1989. It focuses on information dissemination and education throughout the Arab region, working through the media and providing training and information services to other organisations that work on human rights. It runs a large network and has a resource centre including an extensive legal database on constitutions and other laws in the region.

The AIHR designs and provides training courses for various professional groups, such as journalists, lawyers and judges. Previously, the training was designed for a broad audience; now the AIHR gives tailor-made courses to specific groups, presenting practical methods of applying human rights with the aim of making human rights a reality for all.

An exciting initiative of the AIHR is to integrate human rights into children’s education — from kindergarten to secondary level. Through its close connections with the League of Arab Nations, the AIHR is working hard to raise awareness of human rights issues in the Arab world.

**5.2.2.2 Advocating for specific legal reform**

One of the most difficult strategies, yet the one with the greatest potential impact, is advocating for legal reform. It is not easy to achieve reform in the MENA region, where legal systems are so closely tied to religion that many people mistake human interpretations for divine law.

Clearly, to achieve lasting change, a combination of stakeholders including religious leaders, scholars, teachers and experts must first be convinced of its necessity. High-ranking government officials and other opinion leaders must play a strong role in the fight for real change.

In Lebanon, for example, defendants and advocates of women’s rights have developed a proposal for a secular ‘optional law of personal status’, which would be applicable at the national level, regardless
of religious affiliation.\(^{573}\) Such a law would make it possible for citizens to exempt themselves from the application of religion-based laws.

The Beirut-based **Foundation for Human Rights and Humanitarian Law** (FHRHL) has worked hard to make this a reality. In 2002, it initiated a parliamentary petition, demanding the drafting of a civil law of personal status. Such a petition requires signatures from a quorum of at least ten members of parliament for it to be put to a full parliamentary vote. Unfortunately, the petition failed to attract enough support. Other attempts to rally support from various stakeholders have also been unsuccessful, with the greatest resistance coming from the various religious communities.\(^{574}\)

**Women for Women's Human Rights (WWHR) - New Ways** is a leading women’s rights organisation in Turkey. Often a strong voice internationally for Turkish women, it is at the forefront of legal change. WWHR has successfully fought for reform of the Civil Code and the Penal Code, and is currently involved in campaigns to stop violence against women. It is also seeking further reform of the Penal Code; in particular, on issues of ‘honour crimes’. It is also deeply involved in inheritance issues, conducting research that has revealed how widespread violations of inheritance rights are, as well as advocacy for legal reform and changes in practice to put an end to such violations.

The Palestinian women’s movement has pushed for legal reforms in a variety of ways. In the context of preparing for a sovereign Palestinian State, legal reform has become extremely important. A major effort for legal reform was the Palestinian Model Parliament Project (PMPP), directed by the **Women’s Centre for Legal Aid and Counselling (WCLAC)**, based in the West Bank. Recognising that women’s freedom is both a legal entitlement and a state of mind, and is inextricably linked with land and territory, the PMPP launched a community-participation campaign for women’s legal rights.

The PMPP formed community-based committees in the West Bank and Gaza Strip that held forums to debate various issues and then proposed amendments of Palestinian laws, with particular focus on personal status. One of the 35 amendments related to inheritance. The workshops aimed to raise awareness of women’s rights under the personal status laws, and to achieve consensus on the amendments proposed.

During the community campaign, all the proposed amendments were thoroughly analysed. Interestingly, forum participants rejected the amendment on inheritance. Even though that amendment took account of the local Palestinian context and prevailing social attitudes, the participants gave higher priority to other reforms. Notwithstanding WCLAC’s inherent belief that inheritance rights are indispensable to women’s rights as a whole, the organisation decided that it would be unethical to work against the participants’ decision, and so were forced to drop their advocacy around inheritance rights.

### 5.2.2.3 Empowering women

Women in the MENA region are marginalised and need to get organised to take control of their future. An initial strategy of direct individual empowerment and sensitisation is critical to raising awareness among communities of women, who can then work together to claim their rights and improve their lives.

When women become aware of their rights and start working together, they can greatly strengthen their position to fight entrenched systems of patriarchal discrimination. Especially in very traditional communities, where patriarchy runs deep and women are treated as second-class citizens, change can only happen if there is action on a large scale, through a groundswell initiated by a popular women’s

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\(^{573}\) This idea has been proposed for various reasons, including (1) to enhance national cohesion and unity; and (2) to ensure greater respect for freedom of religious belief. However, it has always encountered stiff resistance from confessional groups who cannot agree to its content. See Gannagé (n. 192 above), p. 36.

\(^{574}\) Prior to this, on 18 Mar. 1998, a bill on optional civil marriage had been approved by a majority in the cabinet, but was never submitted to Parliament, drawing vehement protest from groups defending women’s rights. See CEDAW, Second Periodic Report of Lebanon (2005) (n. 182 above), p. 28.
movement. The power of such movements should not be underestimated; when women receive the right support, they can present a serious challenge to the traditional discriminatory beliefs that are often prevalent in communities at grassroots level.

The Amman-based Queen Zein al-Sharaf Institute for Development (ZENID)\textsuperscript{575} has established 50 community centres in Jordan. The motto of each community centre is to “help women to help themselves”.

FOCUS ON MADABA

The community of Madaba, Jordan, is world renowned for its mosaics, most of which date from between the first and the eighth century AD. The ZENID-sponsored Community Centre in Madaba perpetuates and promotes this ancient art, and empowers women at the same time. It runs training programmes on a variety of income-generating activities, one of which is mosaic-making. Along with skills training, the Community Centre engages in awareness-raising on family planning and human rights. Its outreach activities include organising ‘clusters’ or clubs of women in rural areas to promote economic empowerment and rights awareness.

Grassroots organisations such as the rights-based Sweileh Community Centre in Amman, Jordan, report that local women have become more outspoken in claiming their inheritance rights. Collective action is empowering them to claim their individual rights even when their families are hostile. To prevent women from being cheated out of their rights, the existing women’s literacy programme has been expanded to include legal literacy modules that focus on inheritance issues (see textbox, \textit{The inheritance rights flower}, below). ZENID has also launched the Women’s Empowerment, Democracy and Governance Programme (WEDGES), which provides legal literacy programmes at community centres in some of Jordan’s poorest urban areas.

THE INHERITANCE RIGHTS FLOWER

When the COHRE WHRP visited the Sweileh Community Centre, a community workshop on inheritance rights was underway. An audience of about 25 women were answering questions on inheritance. The focal point of the discussion was a large flower, with four petals, drawn on a whiteboard. Each petal represented a piece of the inheritance rights puzzle: (1) the organisations women can turn to for assistance; (2) the recounting of personal experiences; (3) the perceived weaknesses that prevent women from demanding their inheritance rights; and (4) what they actually need in order to be able to demand their inheritance rights.

The ensuing discussion on this simple model was very rich. Of particular interest were women’s perceived weaknesses. Several possible factors emerged, including the following:

1. It is shameful to take.
2. Women have a weak personality, and have been taught not to make demands.
3. There is a lack of equality, and strong patriarchy.
4. Women have misconceptions.
5. Women want to give up their inheritance to benefit other family members.
6. Women are weak in their faith that they are entitled to their share and should therefore keep it.

\textsuperscript{575} ZENID promotes development with a human-rights-based approach, working at policy, project and practice levels for the benefit of poor people. It focuses on addressing gender issues and advocating policy changes to achieve lasting improvements in the lives of poor communities.
The subsequent discussion focused on ways to overcome women's misconceptions. All agreed that education is the key. Women in Sweileh are largely uneducated, and men take advantage of that to cheat them out of their inheritance.

Importantly, the women in the workshop agreed that education can happen at any time and can take several forms. They all wanted to share with their friends what they were learning at the Centre, to put a stop to the practice of women voluntarily giving up, or being forced to give up, their inheritance rights.

The Jordanian Hashemite Fund for Human Development (JOHUD) is developing a ‘database for the poor’ that explains their legal rights. This initiative also provides user-friendly guidance on how to claim rights, with simplified instructions explaining bureaucratic processes — written ‘by the poor, for the poor’.

The Tunisian Association pour la Promotion de l’Emploi et du Logement (APEL, Association for Promotion of Employment and Housing) runs community empowerment schemes, helping citizens to get their voices heard in community governance processes. A team of 20 APEL volunteers enters a community and encourages its members to dialogue on, and think critically about, their needs and issues. The team especially targets women, knowing that they are often the key to appropriate community development. The team returns to the community having assessed its needs and issues, and asks its members to come up with a plan of action to address them, including steps to be taken to achieve a set of appropriate goals. In this way, APEL trains communities to organise and run themselves. Previously, communities were passive: they would just wait for official initiatives by government administrative systems, which usually were not forthcoming or failed them. Now communities have their own voice and take action to ensure that their rights are met.

The Tunis-based Centre for Arab Women’s Training and Research (CAWTAR) acts as an interface between government and NGOs. It conducts research and provides information on poverty, development and various aspects of legislation, attempting to improve media perceptions of women’s rights and promote the girl child. It seeks to influence public opinion, attitudes and values, and successfully works with governments for positive change.

Finally, also in Tunisia, the Centre for Research, Documentation and Information on Women (CREDIF), created in 1990 by the Government of Tunisia and currently acting under the auspices of the Ministry of Women’s and Family Affairs, promotes studies and conducts research and surveys on women and their status in Tunisian society. It acts as a documentation centre, with information on women’s rights, and monitors developments on the situation of women in North Africa. It also provides training on women’s rights throughout that region.
LESSONS TO BE LEARNED FROM SUB-SAHARAN AFRICA

Denial of women’s inheritance rights is a worldwide problem, and many women’s organisations are involved in efforts to combat its ill effects and address the root causes. In the MENA region, where women’s inheritance is a relatively new field of action, a variety of factors – especially the entrenched patriarchy and discrimination – make such efforts extremely difficult. Efforts that have succeeded, such as those in Tunisia and Jordan, have had to overcome considerable resistance. They are part of the much larger and even more challenging process of opening up society to accept women’s rights in general.

In sub-Saharan Africa, the debate on housing and land rights for women has been going on for much longer, not only because land is so essential to rural Africans, but also because inheritance has become a key issue due to the enormous HIV/AIDS death toll. Throughout sub-Saharan Africa, the numbers of widows left homeless and destitute after being denied their inheritance rights have been steadily rising to alarming levels. This issue is becoming increasingly important at the local and, in some cases, the national level. Many women’s rights advocates have been spurred into activism, and those in power are slowly accepting that inheritance rights issues have a major impact on a nation’s economic and social stability.

This gradual acknowledgement of the developmental impact of the denial of inheritance rights has allowed for greater flexibility in advocacy on the issue. The WHRP has identified the following innovative strategies, which could easily be replicated in other contexts, including the MENA region:

- **Targeting of local community leaders:** Direct community involvement is only one strategy utilised by the NGO Women for Change (WFC) in Zambia. In rural communities throughout the country, traditional leaders are regarded as the custodians of culture and development. Recognising the cultural context in which they are working, WFC has embarked on a training programme for all the traditional leaders in Zambia.

- **Direct financial support coupled with advocacy:** The Rwanda Women’s Network (RWN), based in Kigali and working throughout Rwanda, empowers individual women and advocates for their rights at all levels. Recognising that women have specific basic needs for sustenance and health management, the RWN works to enable women survivors of the Rwandan genocide to access financial credit, so that they can develop income-generating activities for themselves and other women. Apart from micro-credit finance, the programme includes shelter construction and housing rehabilitation, training in business and management skills, and organisational capacity-building for women in enterprises. In addition, the RWN is an active voice in government, constantly urging various government ministries to implement programmes and policies that will directly assist widows.

- **Legal representation (1):** The Ethiopian Women Lawyers Association (EWLA), an independent women’s organisation based in Addis Ababa, works through legal channels to defend the rights of women. It provides direct legal services to women who have been subjected to discrimination and abuse; in particular, to poor women who could not otherwise afford legal representation. EWLA has advocated the revision of gender-insensitive articles in Ethiopian law, and has also worked to raise gender awareness by providing training on women’s human rights. One of the greatest successes of its advocacy efforts was the revision of the Civil Code, as a direct result of which the Ethiopian parliament passed a new Family Law.

- **Legal representation (2):** An affiliate of the International Federation of Women Lawyers (FIDA), the Accra-based FIDA Ghana runs a mobile legal clinic, a large bus that passes through rural towns in most parts of Ghana, to provide direct legal counsel and mediation in family disputes, many of which revolve around inheritance. If the matter cannot be resolved with FIDA Ghana’s mediation, a FIDA-appointed lawyer assists the woman in question when she has to go to court.
5.2.3 COHRE's strategies

Since 2003, the COHRE Women and Housing Rights Programme (WHRP) has been focusing on the issue of women's inheritance as it relates to the human right to adequate housing and land. Always working within the context of international human rights law, the WHRP has integrated its legal perspective with more practical considerations, investigating how national laws operate to ensure (or deny) women's inheritance rights, and how women actually realise (or fail to realise) those rights.

Discourse on women's human rights in a religio-cultural context is a relatively new phenomenon, although in recent years the international human rights debate has been converging on the debate about the role of various customs and religions in the modern world. Nevertheless, innovative approaches to the issue of women's rights in the Islamic context – especially women's inheritance rights – are still few and far between. Recognising this disparity, the WHRP, in close co-operation with its partners in the MENA region, has taken a series of initiatives to stimulate broad discussion of women's inheritance rights as human rights within the region and, specifically, in the Islamic context. The WHRP has found much overlap with the situation of women's inheritance in sub-Saharan Africa, even though customary rather than religious law governs inheritance there. This overlap allows the development of common themes of discussion and, more importantly, common strategies for positive change. (See, in particular, Section 4, above.)

5.2.3.1 Fact-finding mission

The present publication is largely based on the results of the COHRE WHRP fact-finding mission to the MENA region in August and September 2004. The WHRP team visited Jordan, Kuwait, Tunisia and Turkey, considering those four States to be representative of the broader region. The fact-finding team met with non-governmental organisations (NGOs), women's rights groups, community-based organisations (CBOs) and women in communities. In Jordan, the team interviewed women in Amman, Zarqa, Madaba and Mafrak who were working with, or benefiting from, local NGOs and CBOs. In Kuwait, the team visited several NGOs in Kuwait City. In Turkey, the team met with NGO and government officials in Istanbul and Ankara. In Tunisia, the team had talks with national and local NGOs based in Tunis.

5.2.3.2 Inheritance rights workshop

In February 2005, the COHRE WHRP brought 26 activists working on women's inheritance in MENA States to one table to discuss inheritance issues from a legal and practical perspective, and to exchange and develop ways of addressing those issues. The workshop emphasised the human-rights-based approach and sought to identify potentially successful strategies and recommendations for improving the inheritance rights situation of women in the region.

The objectives of the workshop were:

1. To share findings and experiences related to women's inheritance rights in different countries and contexts.
2. To identify legal, structural, practical and societal obstacles to women realising their inheritance rights.
3. To highlight strategies that can be employed to overcome such obstacles.
4. To examine successes in the struggle for women's right to inherit housing and land.
5. To formulate recommendations to a variety of actors for changes to law, policy and practice.

The participants were expected to apply what they had learned during the workshop in their local contexts. Indeed, having returned home, most of them explained the key points, and acted as a kind of trainer, to others in their organisations. Some launched inheritance rights campaigns. Others were already engaged in such campaigns, and used what they had learned at the workshop to improve them.

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576 In 2004, COHRE published Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women: A Survey of Law and Practice in Sub-Saharan Africa (n. 522 above) in the initial phase of its Inheritance Rights Project on sub-Saharan Africa. The Project also led to the creation of an informal network of organisations devoted to the issue of women's inheritance in that region. Network members assist each other in individual and collective efforts to claim inheritance rights for women.
5.2.3.3 Inheritance rights summit

The most important conclusion of the WHRP’s research on women’s inheritance rights, first in sub-Saharan Africa and then in the Middle East and North Africa, was that women’s rights advocates and activists in those two regions have much to learn from each other — they should share their experiences of the obstacles as well as feasible methods of tackling them.

It was this realisation that inspired the COHRE-sponsored Summit on Inheritance Rights as Human Rights, which was held during the 61st session of the UN’s most important human rights body, the Commission on Human Rights.577

The two-day Summit brought together ten prominent women activists from sub-Saharan Africa and the MENA region, each of them deeply committed to the realisation of women’s inheritance rights. The debate focused on inheritance-related issues in various contexts, including customary law, religious law, patriarchal systems, the HIV/AIDS pandemic, globalisation and poverty. They discussed strategies for combating ineffective or counterproductive inheritance rights laws and practices, compared approaches ranging from economic empowerment strategies to advocacy tactics, and explored further lines of attack for supra-regional application. A special focus of the Summit was the review and comparison of customary and religious laws and their effects on inheritance.

The Summit complemented the ongoing advocacy and provided an excellent opportunity to bring the issue of women’s inheritance rights to international attention. Indeed, it received significant media coverage, which helped ‘spread the word’, at least among civil society, on this very important topic of inheritance rights as human rights.

This unique event culminated in the Summit Declaration on Inheritance Rights as Human Rights, which was signed by all present – academics, NGO representatives, community-based activists, lawyers, dignitaries, religious experts, and other rights advocates – representing both sub-Saharan Africa and the MENA region. The Declaration was endorsed by two UN Special Rapporteurs and several well-known women’s activists. Here is the full, edited text of the Declaration:

**SUMMIT DECLARATION ON INHERITANCE RIGHTS AS HUMAN RIGHTS, AS PRESENTED TO THE 61ST SESSION OF THE UN COMMISSION ON HUMAN RIGHTS**

Seeing the devastating effects of the denial of inheritance rights on women, and finding a lack of effective action to address this issue, human rights activists have gathered in Geneva, Switzerland, at the Summit on Inheritance Rights as Human Rights, to agree on the way forward on the issue of inheritance rights.

We declare,

*Beginning* from the undeniable truth that all human beings are born free and equal, in dignity and rights, and that international human rights law must be applied in a way to guarantee this for all,

*Confirming* that women and men are equal in law and are entitled to equal protection of the law, and hold such rights independently, on the simple basis that they are human,

*Insisting* that the right to non-discrimination, on any basis, is fundamental to the realisation of all human rights for all, and is not negotiable,

*Recognizing* the fact that women as a group are not homogeneous and that all women, without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, are endowed independently with rights,

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Confirming that the right to an adequate standard of living, and the right of all to live in security, dignity and peace, and all related rights, such as the right to housing, land, health and education, are essential for the well-being of all,

Realizing that inheritance rights, as related to the right to adequate housing and land, as well as a number of other vital human rights, are often denied to women, which in turn has devastating effects,

Mindful of the fact that the denial of inheritance rights manifests itself in different ways, and ultimately represents a denial of women’s rights to non-discrimination and equality,

Convinced that the denial of inheritance rights of women hinders human development and demands resources on the part of the State, and that ensuring the protection of women’s inheritance rights is to the benefit of all stakeholders,

Mindful that the link has been made between the denial of women’s inheritance rights and the spread of HIV/AIDS, as well as with violence against women,

The following recommendations:

While recognizing that governments have taken positive steps towards their human rights obligations, we urge all governments who have not yet done so, to sign, ratify, domesticate, and implement all international human rights laws and standards.

We request that those States who have ratified international human rights covenants with reservations review such reservations to ensure they do not go against the right of non-discrimination and equality for women, and work towards the eradication of those reservations that do.

In this respect, it is necessary that governments harmonize international human rights law with national and local laws that affect inheritance, including customary and religious legal systems, and ensure that such rights are effectively protected at all levels.

We urge States to ensure the eradication of all harmful customary and religious practices, and to ensure that the practice of culture and religion is in harmony with the realisation of women's rights to equality and non-discrimination.

We urge States to celebrate those traditional and customary practices that are in conformity with international human rights law, and request States to take action to abolish those practices that cannot be brought into conformity with international human rights law.

We urge States to take special measures to ensure that women reach substantive equality with men, which include taking positive steps to build an institutional framework which supports the implementation of women's rights.

It is the duty of each government to ensure that human rights are naturalized within the consciousness of its society.

Especially cognisant of the fact that women are often not aware of rights they have in inheritance, housing and land, we request States to ensure that women are made aware of their rights and how to access them through the dissemination of laws and information, through all channels including education and media, in order to empower women to claim such rights and become their own advocates and protectors of their rights.

We urge States to take measures to ensure that women are in positions of decision-making and able to positively influence legal systems.

States must ensure that women are given access to justice and remedies where appropriate, including that the judiciary is sensitive to issues unique to women, such as the need for recognition and implementation of inheritance rights, and that legal representation is accessible to and affordable for women.


5.3 **DIRECTLY UTILISING THE UN TO ENFORCE HUMAN RIGHTS**

All the MENA States examined in the present publication have ratified both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). In addition, all except Iran have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Yet all these States have violated, and continue to violate, women's rights to non-discrimination and equality, as well as their basic economic, social and cultural rights.

5.3.1 **State reports**

Very important opportunities for inheritance rights action are provided by the State reporting processes associated with the various covenants and conventions. Each of these international human rights instruments has a specific reporting cycle: State Parties are obligated to submit periodic reports on the progress they have made in implementing the norms and standards outlined in the covenants and conventions. For example, all State Parties to the ICESCR have to present periodic reports, conforming to set guidelines, to the UN Committee on Economic Social and Cultural Rights (CESCR). The CESCR is charged with monitoring State Party compliance with the ICESCR. This reporting process gives women's rights organisations at the national or local levels an ideal opportunity to engage in advocacy work at the international level. Compelling information provided by civil society organisations can succeed in convincing a UN treaty-monitoring body to put pressure on a State Party to comply with its international human rights obligations; in particular, the obligation to protect women's inheritance rights.

The CESCR monitors treatment of the poor and other disadvantaged groups and assesses whether States Parties are meeting their obligations under the ICESCR. The CESCR does this by: (1) receiving and reviewing reports from State Parties; (2) receiving and reviewing parallel reports and other information from civil society; (3) conducting oral hearings; (4) requesting clarification and further information as necessary; and (5) writing reports, known as Concluding Observations, that evaluate each State Party's performance based on all this information.

These Concluding Observations, published by the CESCR, may include very useful information, such as:
- A finding that a State Party has violated the ICESCR;
- A statement urging a State Party to adopt new legislation or repeal existing legislation, in order to ensure protection from discrimination;
- A recommendation that a State Party should provide specific services, policies or institutions; for example, that the State Party in question should ensure that female victims of ‘property-grabbing’ have access to legal recourse.

Generally speaking, the CESCR accepts written materials submitted by NGOs at any time. For such submissions to be most effective, however, they should take the form of an alternative or shadow report submitted in reply or subsequent to the report submitted by the State Party in question. The CESCR Secretariat maintains a ‘country file’ on every State Party to the ICESCR. At any time, an organisation may submit information relevant to a particular State Party's compliance with the ICESCR and request that this be included in that State Party's country file.578

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578 For more information on the reporting procedures, see [http://www.unhchr.ch/html/menu2/6/cescr.htm](http://www.unhchr.ch/html/menu2/6/cescr.htm), or call the UN Office of the High Commissioner for Human Rights (OHCHR), Geneva, Switzerland, tel. +41.22.917.9000.
There are similar reporting procedures for the Human Rights Committee\textsuperscript{579} and the Committee on the Elimination of Discrimination against Women.\textsuperscript{580} Such procedures are effective in that they lead to recommendations of action for change. All MENA States examined in this publication (except Iran, which is not a State Party to CEDAW) have reported to the CEDAW Committee, and, in several instances, inequality in inheritance rights has been a topic of the Committee’s inquiry. For example, Jordan in its second periodic report stated:

5:… many practices persist which discriminate against women by giving men advantages which women do not enjoy, on the grounds that the man is primarily responsible for his wife, his children, his parent sand his unmarried sisters.\textsuperscript{581}

The response was:

167. … The Committee urges the Government to increase awareness-raising programmes, as well as change stereotypical attitudes and perceptions about the roles and responsibilities of women and men.\textsuperscript{582}

Even if the Committee issues useful output in the form of a concluding observation or urgent letter, it is unlikely that a State Party will implement the Committee’s recommendations without follow-up actions by women’s advocacy groups and other civil society groups. However, most State Parties do not completely ignore the requests of the international community. The Committee’s activities create new opportunities for advocacy and dialogue with policy-makers and other stakeholders, such as religious leaders.

The Committee’s activities can be used to attract media attention and influence public opinion. Especially if the language of the Committee is clear, their official ‘Concluding Observations’ are valuable tools. Here is an example:

64. The Committee emphasized that cultural characteristics could not be allowed to undermine the principle of the universality of human rights, which remained inalienable and non-negotiable, nor to prevent the adoption of appropriate measures in favour of women. As a result, the Committee remained concerned at the profound inequalities affecting the status of women in Morocco. Considerable discrimination in the areas of marriage, conjugal relations, divorce and the custody of children still exists. Laws regarding the punishment of adultery and the ability to pass on nationality continue to benefit the husband to the detriment of the wife.\textsuperscript{583}

By using international human rights treaties in the struggle to promote, protect and enforce women’s housing rights – in particular, inheritance rights – advocates in the MENA region can become part of a broader community striving for common objectives.

\textsuperscript{579} For further information, see http://www.unhchr.ch/html/menu2/6/hrc.htm, or call the OHCHR (see n. 578 above).
\textsuperscript{580} For further information, see http://www.un.org/womenwatch/daw/cedaw/reporting.htm, or call the OHCHR (see n. 578 above).
\textsuperscript{583} Concluding Observations of the Committee on the Elimination of Discrimination against Women: Morocco, 12/08/97. A/52/38/ paras. 45-80.
5.4 WORKING TOGETHER

It is crucial for women’s rights advocates to work together and draw upon each other’s experiences and strengths. As this publication has emphasised in many instances, the obstacles to the realisation of women’s inheritance rights in the MENA region are varied. Therefore, a multi-pronged yet holistic approach to overcoming them must be taken.

Women’s groups in MENA States have already developed an impressive set of resources, arguments, tactics and strategies with which to fight for women’s inheritance rights, often in very difficult circumstances and against formidable opposition. In some of these States, women’s rights advocates have made great strides; in others, it has been difficult even to make women’s rights an acceptable topic of discussion.

There is still a long way to go before real, lasting change takes hold in the region. Organisations working on women’s rights in the MENA region must come together to share their experiences, innovative approaches and successful strategies. Facing common obstacles does permit a common response, yet local contexts must not be left out of the equation.

Linking up with organisations in other regions is also important — there is much to be learned from each other’s successes and failures in similar contexts. Where appropriate, this publication has drawn parallels between the situation of women’s inheritance under the customary law of sub-Saharan Africa and that under the religious law of the MENA region. The parallels are striking, so similar responses may be appropriate.

In order to make such responses universally appropriate and effective, they must always be based on the principles of international human rights law. Human rights provide a common platform for all advocates of women’s inheritance rights, wherever they direct their efforts. By their very nature, they are simple, universal truths that can be contextualised and applied in every situation.

The COHRE-sponsored Summit on Inheritance Rights as Human Rights was the first time that women’s rights advocates and activists from sub-Saharan Africa and the MENA region came together to discuss issues related to women’s inheritance, to share their ideas on how to meet the many challenges, and to create a common platform for advocacy. As the Summit Declaration (reproduced in full in Subsection 5.2.3.3, above) so aptly states:

In this respect, it is necessary that governments harmonize international human rights law with national and local laws that affect inheritance, including customary and religious legal systems, and ensure that such rights are effectively protected at all levels.

Concerned women and those that advocate for their rights must join together to compel States to take their obligations under international human rights law seriously and reform all customary and religious laws that deny women their inheritance rights. Information sharing and dissemination are crucial in this struggle. Gaining strength from one another, these women and rights advocates must transcend local and regional contexts to forge a common, universal strategy for realising all women’s rights to inherit housing and land. Only when all those in favour of women’s rights are united in this common cause can real change happen.
The only room in this home serves as living, cooking, eating and sleeping quarters for a poor family of six. Amman, Jordan, Sept. 2004.
CONCLUSIONS AND RECOMMENDATIONS
6.1 CONCLUSIONS

Inheritance is a complex issue. The formulaic definition of how a legacy is to be shared among heirs in a particular society or State is only one aspect of its actual meaning. Numerous influences act on inheritance: traditional notions, religio-cultural practices, social norms, economic pressures and institutional structures are just a few examples.

Throughout the Middle East and North Africa region, including those countries examined in this publication (with the notable exception of Turkey), inheritance is prescribed primarily by Islam-inspired personal status law — in particular, the Shari'a and jurisprudential interpretations thereof. Matters of personal status are extremely sensitive in this religio-cultural context, because the patriarchal control of society — especially women — is dependent on the laws that govern such matters.

Ultimately, how inheritance is defined in law and practised reflects the degree of respect for women's roles and rights in the society and State, rather than any particular custom or religion. Usually, the custom or religion merely cloaks patriarchal attitudes towards women. Such attitudes are inherent in societies, not only in the MENA region but all around the world.

Like their counterparts elsewhere, women in the MENA region suffer greatly from the enforcement of a severely patriarchal and male-dominated notion of how society should be structured. Historically entrenched patriarchal attitudes — which, unfortunately, are often justified with misconceptions of the true meaning of Islam — subjugate women and expose them to widespread and persistent discrimination. Their subservient position is reflected in their enforced dependency upon males, which is nowhere more evident than in the concept of male maintenance of females and bride price (mahri), for example. Women are expected to submit to the will and whim of men and to act in a way that upholds the ‘family honour’. In so doing, they relinquish their autonomy and their independent rights. The combined effect of patriarchal social structures and institutions that are not based on human rights principles, as well as personal status laws that enshrine gender inequality, is that women and girls receive inheritance shares that are far less than those of men and boys. Indeed, in many cases, women and girls receive nothing at all.

Positive change to inheritance regimes is of critical importance to all members of society — and it is inevitable: the current discriminatory practices are not sustainable. There was a time when inheritance as prescribed in the Shari'a and as dictated by local customs and traditions was appropriate to the particular cultural and social contexts in which it had developed and was applied. Traditionally, throughout the MENA region, men were responsible for the livelihood of the family and generally took that responsibility seriously. Today, however, many men seem to have lost that sense of responsibility and female-headed households are common throughout the region. Therefore, customs, traditions and laws should adapt to these drastically changed circumstances.
Many efforts are currently being made to help women realise their human rights — and the rights to inheritance, adequate housing and land are at the focus of such efforts. Throughout the MENA region, Islamic scholars, women's rights activists and women at grassroots level in communities are engaging in the campaign for women's rights. This incorporates: (1) innovative strategies on documenting human rights abuses; (2) linking up with, and reaching out to, other organisations; (3) education and sensitisation of communities; and (4) advocacy with governments and other stakeholders. Inheritance rights are being increasingly recognised not only as a critical factor in women’s well-being, but also as a key indicator of the overall respect given to women. As such, they merit attention and, more importantly, effective, concerted action.

With internationally recognised human rights principles as the framework for such action, the way forward is clear. The application of human rights principles – always with respect for, and sensitivity to, local values and beliefs – provides not only a legal mechanism, but a system of social transformation whereby needs become entitlements and charity becomes obligations. Human rights empower women to become instruments of their own change, rather than objects of change by others. The human-rights-based strategies and solutions proposed in Section 5, above, have already had a positive impact and will continue to effect change. While the proposed strategies and solutions may not work immediately in all cases, with commitment, strength and perseverance the undeniable truth that human rights are also women’s rights will soon be the reality for all.

6.2 RECOMMENDATIONS

Based on the findings of this project and grounded in human rights principles, COHRE respectfully makes the following recommendations to the various actors involved:

6.2.1 To the international community

1. The United Nations should strengthen existing mechanisms to protect women’s housing and land rights in all regions, including the Beijing Declaration and Platform for Action, and the Habitat II Agenda and Platform for Action.

2. The UN General Assembly should ensure that all its members, as a collective, make women’s human rights – in particular, economic, social and cultural rights – the highest priority.

3. The Committee on the Elimination of Discrimination against Women (CEDAW) should adopt a General Recommendation on women and the right to adequate housing which should also substantively address the issues of women’s inheritance and ownership rights and make recommendations for inheritance rights in all contexts.

4. The United Nations Development Fund for Women, UNIFEM, should make the issue of inheritance, adequate housing and land for women a priority area, and should integrate it into its work, especially with regard to issues of health and education for women and girls.

5. The UN Secretary General should request a comprehensive report on the inheritance rights situation of women throughout the world, to be presented to the General Assembly for action and recommendations to State members.

6. The various UN treaty bodies, especially the Committee on Economic, Social and Cultural Rights (CESCR) and CEDAW should request all States that have ratified the respective conventions with reservations to review the need for their reservations with a view to eliminating them.
6.2.2 To the League of Arab States

7. The League of Arab States should take a firm stance against all forms of discrimination against women, both in law and in practice, in all its Member States and throughout the Arab region.

8. The League should actively enforce Article 3(b) of the revised Arab Charter on Human Rights, which confirms gender equality and requests that States “take requisite measures to guarantee effective equality in enjoyment of all rights ... and ensure protection against all forms of discrimination.”

9. The League should comprehensively review law in all States within its jurisdiction in order to reform discriminatory laws and thereby address the concerns of women in the region.

10. The League should commission research on inheritance practice in all States within its jurisdiction and encourage its Member States to do the same, in order to reveal the true extent and severity of discrimination in inheritance practice and address the concerns of women in the region.

11. The League, together with women's rights advocacy organisations and grassroots groups, should organise and implement an education and sensitisation programme on women's economic, social and cultural rights, with particular focus on rights to inheritance, adequate housing and land, to cover the entire Arab region. This programme should involve all relevant influential members of society, including government officials, religious leaders, clerics and scholars. It should present its messages in a clear and easily understandable way.

12. The League should hold a Special Session on the issue of inheritance rights for women in Arab States. It should invite women's rights advocacy organisations and victims of inheritance rights violations in Arab States to participate in the Special Session and testify before the League.

13. The League should work together with the African Commission on Human and Peoples' Rights, as well as the African Union, in promoting women's rights to inheritance, adequate housing and land for the whole of the MENA region.

6.2.3 To the Organization of the Islamic Conference

14. The Organization of the Islamic Conference (OIC) should enforce its Covenant on the Rights of the Child in Islam; in particular, Article 5, which expressly protects the equality of children, regardless of their sex, to enjoy their rights and freedoms.

15. In accordance with its founding Charter, the OIC should seek to further “the struggle of all Muslim people to safeguard their dignity, independence and national rights”, which would include the rights of women to inheritance, adequate housing and land, as such safeguard their dignity, independence and rights.

16. The OIC, with its expertise on Islam, should expound those Islamic values that protect women's rights, while ensuring that all laws and practices in its Member States are in line with such values and human rights principles.

17. The OIC should consider forming a Special Committee on the Rights of Women under Islam, which could promote positive interpretations of Islam in order to further women's human rights, including gender equality and non-discrimination in particular.
6.2.4 To the MENA States

18. All States in the MENA region should ensure that international human rights law and standards are domesticated into their national and local legislation.

19. States should immediately take the necessary steps to overcome and withdraw their reservations to human rights treaties; in particular, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). States should also ratify the Optional Protocol to CEDAW.

20. States should review and revise their existing policies and laws in a comprehensive and participatory manner to ensure that all these adequately protect women’s equality and housing and land rights, including inheritance rights.

20a. States should ensure that their constitution explicitly guarantees equality between the sexes in the recognition, enjoyment and exercise of all human rights, and that such guarantee is actively enforced.

20b. States should ensure that their personal status codes are founded on the principle of gender equality and, where possible, are of a secular nature. In States with multiple personal status codes, each citizen should be free to choose which personal status code is to apply to him/her.

21. States should provide nationwide education and sensitisation programmes to raise public awareness of women’s rights to equality and non-discrimination. Such programmes should be designed and implemented in collaboration with women’s rights groups and grassroots organisations and should explain human rights standards and laws, especially those that relate to the right to adequate housing and land for all. Influential stakeholders, such as religious leaders, clerics and scholars, should play a prominent role in these programmes. Because of the high illiteracy rates in some areas, these programmes should make use not only of printed media but also television and radio.

22. States should implement enforcement systems, incorporating special police and judiciary units, State-sponsored legal aid and State-run projects to combat abuse of women (such as the Family Protection Project in Jordan) in order to ensure that women are able to claim their inheritance rights and are not tricked out of them by family members. To ensure proper implementation, such enforcement systems should be supported with adequate financial and human resources.

23. States should establish shelters for female victims of all forms of violence and rights abuses, including denial of inheritance rights. In cases of inheritance rights denial, States should support the victims while their legal claims are pending, in order to prevent them from becoming homeless after they have been dispossessed of their housing, land and other property.

23a. Additionally, States should establish community centres that provide spaces for women to come together and discuss the issues that concern them.

24. States should ensure that their government, administrative, legislative, judiciary and law-enforcement officials are gender-sensitive. Where necessary, the judiciary and other State-sponsored institutions should be reformed to ensure that they are genuinely committed to equity and transparency. For all these types of officials, regular human rights training sessions focused on women’s human rights are essential.

25. States should create economic opportunities for women, especially those who head households, to enhance their ability to provide for themselves and their family. Adequate social security payments should also be made available to women, based on the number of children they have and the years of household work and child-rearing that they have invested in family and society.
6.2.5 To religious leaders

26. Religious leaders, in recognition of their powerful influence on the everyday lives of those who live in the MENA region, should work to promote women's human rights; in particular, their economic, social and cultural rights.

27. Religious leaders should ensure that laws derived from religion are properly interpreted, in line with the fundamental teachings of equality and non-discrimination, and that such laws are implemented and enforced in a way that guarantees protection of women's human rights.

28. Religious leaders should allow women to gain prominence in their communities, and instil in their male followers acceptance of the fact that women are autonomous and have independent rights, no less than men.

29. Religious leaders, especially religious scholars, should exercise *ijtihad* (independent, scholarly effort to interpret Islamic legal sources) on the issue of inheritance rights through rational reasoning on jurisprudential and textual rules derived from the *Qur'an*, in conformity with the notions of justice, equity and *Ma'ruf*. Such reasoning should be based on human rights principles and should take account of modern family and social realities.

30. Religious leaders should promote women's active and public participation in community life.

6.2.6 To women's organisations and other NGOs

31. Women's organisations and other NGOs throughout the MENA region should focus on women's rights to inheritance, adequate housing and land as a key issue in their work. Adopting such a focus would help to improve other aspects of women's lives.

32. Women's organisations and other NGOs should utilise international human rights standards, laws and bodies as a vital resource in their advocacy for women's inheritance rights.

33. Women's organisations and other NGOs should raise public awareness of human rights laws and standards, paying particular attention to demonstrating how human rights and Islam-inspired law intersect and are compatible.

34. Women's organisations and other NGOs should campaign to eliminate the culture of shame that surrounds women who claim their rights, and to demonstrate to all that women can and should claim their rights.

35. Women's organisations and other NGOs should link with religious leaders and scholars to promote interpretations of Islam that are in conformity with women's human rights, including gender equality and non-discrimination.

36. Women's organisations and other NGOs should work with their respective governments and other officials to incorporate international human rights law into domestic law, thereby paying particular attention to women's housing and land rights, including the rights of women to equal ownership and inheritance.

37. Women's organisations and other NGOs throughout the region should exchange and discuss each other's strategies and best practices related to advocacy for women's inheritance rights.

37a. Women's organisations and other NGOs should, to the greatest extent possible, forge links with other organisations outside their region, especially in Africa, on issues of women's rights to inheritance, adequate housing and land, in order to exchange and discuss ideas, approaches and strategies on issues that they have in common.

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*Ma'ruf* denotes what is commonly known, understood and accepted within the community of Muslims. As this is certainly changing along with society, the rules governing family relations should be constantly reinterpreted.
38. Women's organisations and other NGOs should implement and support low cost and/or free legal aid programmes that can directly intervene in cases of violations of women's human rights; in particular, inheritance, housing and land rights.

39. Women's organisations and other NGOs should support community-based initiatives to help women to learn about, promote and fight for their own rights to inheritance, adequate housing and land, though education, sensitisation and community-action programmes.

40. Women's organisations and other NGOs should utilise the mass media to draw popular attention to the issue of violations of women's inheritance rights in their respective countries, in order to raise awareness and mobilise the public to action.

41. Women's organisations and other NGOs should train judges and magistrates, religious leaders, administrative officials and other authorities about women's rights to equality and non-discrimination, as well as women's rights to inheritance, adequate housing and land.

42. Women's organisations and other NGOs should set up community centres and/or shelters across their region or State to ensure that disinherited women and girls have a place to sleep and people to turn to for support, advice, legal assistance and counselling.

6.2.7 To the donor community

43. The donor community should support targeted and implemented projects that seek to educate and inform women about their human rights to non-discrimination and equality, as well as to inheritance, adequate housing and land.

44. The donor community should support efforts to reform legal systems in accordance with international human rights standards, thereby supporting religious and/or scholarly institutions to engage in a critical review of Islam-inspired laws and jurisprudence, as well as supporting governments to critically review their own policies.

45. The donor community should support education and sensitisation programmes at regional, national and community level with a view to promoting and respecting women's human rights; in particular, to equality and non-discrimination in family matters.

46. The donor community should support programmes that provide legal aid and enforcement structures to ensure that women's rights are not subverted by police and judiciary mechanisms.

47. The donor community should support education and sensitisation of judiciary and law-enforcement officials to ensure that they are free from bias and discrimination against women.

48. The donor community should support all efforts to economically empower women.

49. The World Bank and the International Monetary Fund (IMF) should encourage governments to abide by their various commitments set out in their current Poverty Reduction Strategy Papers (PRSPs), and to ensure that women's rights to inheritance, adequate housing and land are an important aspect of their upcoming PRSPs.
6.2.8 To women themselves

50. Women should recognise that their concerns are legitimate, that their needs are a priority, and that they have human rights. They must learn not to sacrifice their rights to benefit family and community.

51. Women should acknowledge their own contributions to household and community, and should make those around them aware that these contributions are valuable and therefore deserve respect.

52. Women should form groups to support and encourage each other in claiming their rights.

53. Women should speak openly about their human rights to their husbands, fathers and other male family members.

54. Women should take active part in their community, national and regional government structures to ensure that their needs and concerns are placed high on the agenda.

55. Women should work together to apply peer pressure within the community to break the silence and speak out against abuses of their fundamental human rights.

56. Women should demand their rightful share of inheritance and, if necessary, use all available channels, including the law courts, to ensure that their inheritance rights are realised.
GLOSSARY

OF NON-ENGLISH TERMS
Al-hajb: The testator’s right to exclude certain relatives from the inheritance altogether (such as the father’s exclusion of the grandfather) or to reduce their inheritance share (for example, from one fourth to one sixth). Religious leaders and scholars usually agree that parents, children and spouses cannot be completely excluded, because they are the nearest in line to the deceased.

Al-Majallah al-Adiliya: The Majalla, or Ottoman Civil Code of 1869, which was based on the principles of Islamic civil law.

Al-Nakbah: ‘The catastrophe’, how the Palestinians refer to the depopulation and/or demolition of hundreds of Palestinian towns and villages, the dispossession of huge amounts of Palestinian land and other property, and the flight and expulsion of hundreds of thousands of Palestinians in and as a result of the 1948 Arab-Israeli war, during which the State of Israel was established.

Al-wassiya al-wajiba: Obligatory legacy, whereby a child whose father dies before his or her grandfather does is assigned the father’s inheritance rights, provided that the share thus gained does not exceed one third of the total assets.

'Asaba: The deceased’s male agnatic heirs, including the son, the agnatic grandson (son’s son) and the paternal uncle (father’s son). They share whatever portion of the inheritance remains after the fixed shares have been distributed to the obligatory heirs (ashab al-fara'id).

Ashab al-fara'id (or ashab al-furud): ‘Those entitled to inherit’, the group of obligatory heirs who are granted pre-defined fractions of the estate that remains after all the deceased’s debts have been paid and the will has been executed. They consist of the nine mentioned in the Qur’an, plus the three added by analogical reasoning (qiyas), all of whom are entitled to shares that vary according to specified sets of conditions. The group comprises: mother, father, wife (widow), husband (widower), daughter, full (germane) sister, uterine sister, agnatic (consanguine) sister, uterine brother, maternal grandmother, paternal grandfather and agnatic granddaughter (son’s daughter).

Ayatollah (lit. ‘sign of God’): The title given to major Shi'a clergymen. They are usually experts in Islamic studies such as jurisprudence, ethics, philosophy and mysticism, and teach in seminaries of Islamic sciences.

Ayib (also ayab or ayb): ‘Shame’, usually as defined by society or culture.

Bedu: ‘Desert dwellers’, the Bedouin are (formerly) primarily nomadic Arab peoples of the Middle East, where they form about 10 percent of the population.

Caliph: The title borne by the leader of the entire ummah, or community of Islam. The title has been defunct since the abolition of the Ottoman Sultanate in 1924.

'Eddeh: Among Sunni and Shi’a Muslims, the obligatory waiting period of three menstrual cycles following divorce, during which the ex-wife cannot remarry because she must first find out whether she is pregnant from her ex-husband. The latter’s financial obligations towards his ex-wife are limited to maintenance during this period. If there have been no signs of pregnancy for a period of three menstrual cycles, the ex-husband can be sure that his former wife will produce no more children for him to support, and she is then free to remarry.
**Fardh**: ‘Obligation’. In the context of inheritance, it refers to the system of pre-defined fractions of the deceased estate that are received by specific heirs according to the prescriptions of the Shari’a. This system serves to determine and protect the share to which a woman or girl may be entitled in the absence of any or sufficient eligible male relatives.

**Fatwa**: A legal pronouncement in Islam, issued by a scholar of the Shari’a in relation to a specific issue. Usually, a fatwa is issued at the request of an individual or a judge to settle a question in which Islamic jurisprudence (fiqh) is unclear. A scholar capable of issuing a fatwa is known as a Mufti. A fatwa is not binding on all persons who profess the Muslim faith, only the Mufti (and his followers) are obligated to follow his own fatwa.

**Fiqh** (lit. ‘understanding’): Islamic jurisprudence, or complementary interpretations of the Shari’a, consisting of the rulings (fatwa) of Islamic legal scholars to direct the lives of Muslims. Fiqh is a component of Islamic studies and a synthesis of primary and secondary sources. There are different approaches to the methodology used in fiqh to derive the Shari’a from Islamic sources; these methodologies are divided between various schools of thought (madhahib), each madhhab being named after the Islamic jurist who originally taught within it. The general consensus is that the Shari’a does not change, whereas fiqh rulings may change at any time, though they stay within the realms of a cultural reality unique to the time when the classical jurists themselves lived; that is, when the first interpretations were made. As such, the schools’ teachings have remained stagnant and do not necessarily reflect the current cultural reality.

**Habous** (or waqf): An inalienable religious or charitable endowment of immovable property. Lands or buildings committed to private habous pass exclusively to the deceased owner’s male heirs, so long as the male bloodline continues. However, should the line fail, the private habous becomes public habous. By declaring his estate as habous and his male descendants as trustees, a rich man can provide income for his surviving family.

**Hadith**: An originally oral tradition, a narration relating to the sayings and customs of the Prophet Muhammad and his companions. All traditional Islamic schools of jurisprudence regard collections of hadith as essential tools for determining the Muslim way of life, or Sunnah. There are several types of hadith, including what the Prophet Muhammad said, did, and approved of in others’ actions.

**Halal**: That which is permissible under the Shari’a. Its antonym is haram (prohibited). Halal applies to many aspects of day-to-day life, including behaviour, speech, dress and diet.

**Hanafi**: Within Sunni Islam, the largest of the four schools (madhahib) of religious jurisprudence (fiqh). It was founded by Imam Abu Hanifa and is now predominant among Sunni Muslims in northern Egypt and Pakistan. Hanafi is followed by approximately 30 percent of Muslims worldwide. The Hanafi school is considered to be one of the more liberal.

**Hanbali**: Within Sunni Islam, one of the four schools (madhahib) of religious jurisprudence (fiqh). Founded by the students of Imam Ahmad ibn Hanbal, it is considered to be the most conservative of the four schools, and is followed by less than 5 percent of the world’s Muslims. It is the school of jurisprudence used in modern-day Saudi Arabia.

**Haram**: That which is prohibited under the Shari’a. Its antonym is halal (permitted). Haram includes all manner of forbidden behaviours.

**Hejab**: ‘Cover’ or ‘veil’, the covering of a woman’s head, face and/or body for purposes of modesty, privacy and morality.

**Ijma**: The consensus of the ummah (community of Muslims). In reality, ijma refers only to the consensus of traditional Islamic scholars (ulema) on particular points of law.

**Ijithad**: The jurisprudential process of making a legal decision by independent interpretation of the Qur’an and the Sunnah, the two most important sources of the Shari’a. It is a method of legal reasoning that does not rely on the traditional schools (madhahib) of jurisprudence (fiqh). The person who applies
ijtihad, the mujtahid, must by tradition be a scholar of the Shari'a. Most Sunni scholars and jurists (the ulama) believe that, traditionally, the door of ijtihad has been closed for centuries; in contrast, Shi'a scholars believe that contemporary interpreters can derive jurisprudence from the Qur'an and the Sunnah with the same authority as their traditional predecessors.

**Imam** ('Leader'). The ruler of a country, for example, might be called imam. However, the capitalised term has important connotations in the Shi'a Muslim tradition, in which the religious leader known as the Imam is considered an infallible example, though he is neither a prophet nor a messenger of Allah.

**Islam** (lit. ‘submission to God’): Islam is a monotheistic faith, the world’s second-largest and fastest growing religion. Followers of Islam are known as Muslims.

**Ja’fari**: The main school of law in Shi’a Islam, founded by the sixth Imam, Ja’far as Sadiq.

**Jahiliya**: ‘Ignorance of divine guidance’, the era marked by barbarism and unbelief in which the Arabs existed prior to the dawn of Islam.

**Kadi** (also Qadi): A religious judge whose duties are outlined in the Shari’a and whose responsibility is restricted to matters such as marriage, divorce and inheritance.

**Kafala**: A practice similar to adoption whereby adults may take an orphaned or abandoned minor into legal custody for protection until he/she reaches the age of majority. Unlike an adoptee, however, he/she is not entitled to use the family name and has no inheritance rights.

**Kawama**: An Islamic concept in the Shari’a that describes a man’s responsibility for his family, in terms of the income spent on and endowments made to them. This has been misinterpreted by some to signify men’s superiority over women.

**Ma’ruf**: That which is commonly known, understood and accepted within the community of Muslims (ummah).

**Madhhab** (pl. madhahib): An Islamic school of thought or religious jurisprudence (fiqh).

**Mahr** (Persian [Farsi], Mahriyeh): Loosely translatable as ‘marriage settlement’ or ‘bride price’, this important part of Islamic marriage is intended to be an obligatory gift from the groom to the bride (and not her parents or guardian). Although it may be, and often is, a sum of money, it can be any equivalent gift so long as it is agreed upon by the bride and groom.

**Maliki**: The Maliki madhab, derived from the work of Imam Malik (Malik bin Anas of Medina), is the second-largest of the four schools of religious law (fiqh) within Sunni Islam. It is followed by approximately 25 percent of Muslims, mostly in North Africa, southern Egypt, Sudan, and regions of West and Central Africa.

**Miri**: (lit., ‘belonging to the Emir’.) Originally, lands conceded by the Ottoman Sultan to men who had distinguished themselves in warfare. Theoretically, such property remained with the Sultan and only a right of exploitation was conceded. In practice, however, the State would leave the property entirely to the grantee’s discretion. The right of the latter was consolidated over time and transmitted through succession.

**Moudawana**: Morocco’s Family Code, the only Moroccan code of law still based on Islamic principles. It underwent major reforms in February 2004, after prolonged campaigning by women’s rights groups in Morocco. These reforms made strides towards a more gender-equitable and progressive family code.

**Muhammad**: He is considered the Last Prophet of Islam by mainstream Muslims, and the founder of Islam by non-Muslims. According to traditional Muslim biographers, he was born ca. 570 A.D. in Mecca (Makkah) and died on 8 June 632 in Medina (Madinah).

**Mulk**: Property held in full ownership (such as buildings, orchards, vineyards and moveable property) and inherited under Islamic codes of succession.
**Mut'a**: ‘Temporary marriage’, which has many conditions that are considered as prerequisite and are similar to those of permanent marriage. It is endorsed by the Ja'fari school of thought within the Shi'a Muslim tradition. The Sunni schools of thought reject it.

**Nafaqa**: The husband’s obligation to maintain his wife (wives) according to his means, not only financially but also in terms of food, clothes and lodging, etc.

**Qiyas**: In Sunni Islamic jurisprudence (fiqh), the process of reasoning by analogy from a known to a new injunction, whereby the ruling of the Qur'an and the Sunnah may be extended to a new problem provided that the operative or effective cause is the same.

**Qur'an** (also Koran): Loosely translatable as ‘recitation of great devotion’. The Qur'an is the holy book of Islam. It consists of 114 chapters (suwar, pl. of surah) with a total of 6 236 verses (ayat, pl. of ayah). It is the fundamental belief within Islam that the Qur’an is the literal word of Allah, His final revelation to humanity, revealed through Muhammad, the last prophet of Islam, over a period of 23 years until his death.

**Sharaf**: ‘Honour’. Denotes the honour of a social unit, such as a tribe, clan or family. If a member of such a unit fails to adhere to that which is prescribed for him/her (that is, fails to display adequate moral behaviour), the social status of the unit is weakened. Sharaf can be redeemed by exemplary behaviour (for example, generosity or courage). Sharaf also denotes a strictly upheld code of honour, which works to justify the patriarchal system that prescribes one set of values and behaviours for men and a very different set for women. This code demands that women act in a chaste, obedient and subservient manner, while men control family and kin.

**Shari'a** (lit. ‘way’ or ‘path’): The body of law based on the Qur'an and the Sunnah that regulates the public and some aspects of the private life of Muslims. As Islam draws no distinction between religious and secular life, the Shari'a covers not only religious observances, but also many aspects of day-to-day life, including politics, economics, banking, business, contracts, sexuality, and social issues. In deriving the Shari'a, Islamic lawmakers attempt to interpret divine principles, yet they are largely influenced by local customs. Like Jewish law and Christian canon law, the Shari'a has been variously interpreted by different people in different times and places. Some Islamic scholars accept the Shari'a as the body of precedent and legal theory established before the 19th century; other scholars view it as a changing body, including Islamic legal theory from the contemporary period.

**Shafi'i**: The Shafi'i madhab, based on the work of Imam Shafi'i, is one of the four schools of fiqh or religious law within Sunni Islam. In the Middle East, Shafi'i is most prevalent in Egypt, Kurdistan, Palestine, Syria and Yemen. In the Far East, it is most prevalent in Indonesia, Malaysia, the Philippines, Singapore, Sri Lanka and Thailand. It is followed by approximately 15 percent of Muslims worldwide.

**Sheikh** (also Shaikh): Elder, or a revered old man. In many Middle Eastern countries it is used for men of stature, whether in business, academia or government positions. The title is independent of religion and is often used by Arab Christians for elder men of stature. As a general rule of thumb, one may call a male older than 60 years a sheikh.

**Shi'a, Shi'i**: Shi'a Islam is the second largest denomination or sect of the Islamic faith. Shi'a is short for Shi'at Ali (lit. ‘followers of Ali’, referring to Ali ibn Abu Talib, the first Imam, who was the Prophet Muhammad's cousin, son-in-law and the father of Muhammad's only descendants.) Approximately 10 percent of the world's Muslims are Shi'a, though some claim that they are undercounted, primarily due to political discrimination. The majority of the world's Shi'a Muslims live in Iran and Iraq, though Afghanistan, Azerbaijan, Bahrain, India, Lebanon, Pakistan, Yemen, and some other Persian Gulf states also have significant Shi'a Muslim minorities. Most Shi'a Muslims follow the Ja'fari school of law.

**Sunnah** (lit. ‘trodden path’ or ‘way’): The Sunnah of the Prophet means ‘the way of the Prophet’, or the religious traditions established by Muhammad during the 23 years of his ministry. The Sunnah is the second most important source of the Shari'a after the Qur'an.
**Sunni**: The largest denomination or sect of Islam, comprising around 85 to 90 percent of all Muslims. Sunni is derived from the word Sunnah, which refers to the religious traditions established by the Last Prophet of Islam, Muhammad. Sunni Muslims are referred to as Ahl ul-Sunna, 'the people of the tradition'. There are four Sunni schools of law (madhahib): Hanafi, Maliki, Shafi'i and Hanbali.

**Surah** (pl. suwar): In the Qur'an, the word used for ‘chapter(s)’.

**Talaq** (lit. ‘dismissal’): In the legal context, ‘repudiation of marriage’ or divorce.

**Ta'ssib**: Inheritance system (whose origins pre-date Islam) whereby inheritance is limited to the deceased's male agnatic relatives (including the son, grandson, brother, father and paternal uncle).

**Twelvers**: Approximately 80 percent of Shi'a Muslims believe that there have been twelve Imams. These Muslims, known as Twelvers, represent the largest Shi'a school of thought and are predominant in Azerbaijan, Bahrain, Iran, Iraq, Lebanon and Palestine.

**Ulema**: Scholars engaged in Islamic studies; in particular, experts in Islamic jurisprudence (fiqh) who operate as arbiters of the Shari'a.

**Ummah**: ‘Community’ or ‘nation’. In the context of Islam, ummah denotes the community of believers (ummat al-mu'minin); that is, the entire Muslim world.

**Wala’**: The right to inherit from a slave. Traditionally, this right would be granted to the master/mistress when he/she freed the slave, provided that there were no natural heirs.

**Waqf** (or habous): An inalienable religious or charitable endowment of immovable property. By declaring his estate as waqf and his male descendants as trustees, a rich man can provide income for his surviving family.

**Welaya**: An Islamic concept in the Shari'a that denotes men’s right to make financial decisions. It is associated with the man’s role as the sole breadwinner and thus cannot be said to apply completely today, when women are also earning incomes. The term has been misinterpreted by some to signify men’s guardianship over their wives.
Since 1998, the Women and Housing Rights Programme (WHRP) of the Centre on Housing Rights and Evictions (COHRE) has worked to promote and protect women’s equal right to inheritance as an essential part of the human right to housing and land. WHRP research, first in sub-Saharan Africa and later in the Middle East and North Africa (MENA region), has revealed that – both in law and practice – women’s inheritance rights are often neglected and rarely respected. The WHRP found striking similarities between these two regions in terms of the reasons why, and the methods whereby, women are denied inheritance.

In mid-2005, the WHRP completed its research of issues related to women’s inheritance, housing and land rights in the MENA region, taking in Algeria, Egypt, Iran, Jordan, Kuwait, Lebanon, Morocco, Palestine, Tunisia and Turkey. The focus was on the legal situation of inheritance rights in these States, as well as women’s experiences of inheritance issues.

This report, with contributions from sister organisations in eight MENA States, reveals how complex such issues are, identifies causes and consequences of inheritance rights violations, and recommends key changes, based on a human rights framework. The main finding is that inheritance laws should be reformed to embody full gender equality. Far more challenging will be the eradication of the cultural roots of discriminatory customs, traditions and notions. Education must also take high priority as most women are unaware of their rights.

The Geneva-based Centre on Housing Rights and Evictions is an independent, international, non-governmental organisation committed to ensuring the full enjoyment of the human right to adequate housing for everyone, everywhere. COHRE is registered as a not-for-profit organisation in Australia, Brazil, Ghana, The Netherlands, Sri Lanka, Switzerland and the USA.

The COHRE Women and Housing Rights Programme seeks to ensure that the specific needs and concerns of women regarding their housing and land rights are addressed and championed. Based in Accra, the WHRP collaborates closely with partners at all levels in supporting and empowering women worldwide to claim and realise their housing rights.