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Women's disinheritance in Libya: how women in Benghazi claim long denied inheritance rights

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ABSTRACT





Legally Libyan women are entitled to inherit land, yet many women are discouraged by family members from claiming their inheritance. This paper explores this discrepancy between norms and practices, by first offering a general legal, historical, and cultural context of women's rights to land and inheritance in Libya. Then, it details the case of one elderly woman, Um Aliz. Like many Libyan women, she initially felt that she ought not claim her right to inherit land. But in recent years, Um Aliz has changed her mind due to her deteriorating health, children's encouragements, relatives' pioneering efforts to claim their rightful inheritance, society's changing ideas on women's land rights, and rising land prices. Although Um Aliz's justice journey is not complete, she has ended her silence and the case has entered the court system. Together with reflections from legal professionals, Um Aliz's case illustrates the limits of legal reform and the persistence of inheritance practices which are legitimised by reference to tradition. Yet the paper also suggests that amidst great and worrying societal turbulence some Libyan women are emboldened to claim their inheritance.

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KEYWORDS Women's disinheritance; Libya; women's rights; customary law; inheritance

1. Introduction

Can a woman inherit land from her family and if so, how much? This ostensibly simple question is governed in Libya by three sources of norms. First, customary law is frequently interpreted to mean that women have no right to inherit land to avoid that the land of a family or tribe scatters and ends up in the hands of outsiders. Second, interpretations of sharia often entitle women to inherit half the share of their male relatives. Third, Libya's

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legislation has historically sided with sharia on the matter, and so legally Libyan women have been entitled to inherit. Rather remarkably in the Islamic world, Libya even criminalised disinheritance already in 1959.¹ Yet despite these legal entitlements, Libyan women are frequently prevented by male relatives from claiming their right to inherit land – this is what we will call ‘disinheritance’.

Women’s disinheritance is important, because it concerns many women in Libya and around the world who are deprived of their legal right (Stone and Bro 2018). Hard numbers about disinheritance in Libya are difficult to come by, but some indication are the many questions posed to Dar al Ifta for religious guidance (Arabic: *fatāwā*)² on women’s inheritance.³ Separately, a religious sheikh interviewed for this paper said, ‘If I had intervened in every case that was presented to me, I would have spent my life every day in a [disputant’s] house [resolving problems]’.

Contrary to women in most Western societies, Muslim women have ‘enjoyed an autonomous legal identity and separate property rights since the seventh century’ (Bishin and Cherif 2017, 506). In all interpretations of sharia, women are entitled to inherit property, although their share vis-à-vis male relatives is debated.⁴ The Islamic inheritance system, the ‘science of the shares’ (Arabic: *‘ilmu qīl farāyīdī*), is rooted in the Qur’an which deals at length and in detail with inheritance (Powers 2007). Still, its application to real-world family configurations can be complicated. Often, women receive half the share of their male relatives (i.e. when a father dies, his daughter inherits half the share of his son). It is important to stress that, ‘In Islamic thought, a man’s greater inheritance rights are justified by linking them to his maintenance obligations (Arabic: *nafaqah*)’ (Moors 1996, 51). While the Islamic inheritance does not treat women as equal to men, it often remains a step up from the complete disinheritance advocated in many customary systems. In Muslim societies with strong customary systems – Afghanistan, Mali, Nigeria, the Tanzanian island Zanzibar – an appeal to sharia law can hold emancipatory potential for women in inheritance matters (Stiles 2014; Otto 2010). In this case study, too, some Libyan women consider their disinheritance not just wrong or illegal, but also in conflict with Islam.

During the Arab Spring and in its immediate aftermath, many North African women hoped and pressed for more equal women’s rights (Hanafi and Tomeh 2019; Hallward and Stewart 2018) – often to be disappointed in the ensuing years (Jurasz 2013; Johansson-Nogués 2013). In Libya, the 2011 revolution against Gaddafi was followed by a turbulent decade disfigured by war and divisions, which in the eyes of some Libyan feminists has hardened patriarchal attitudes. Rida Al Tubuly, academic and activist, argued that ‘War has amplified the culture that wants women to marry early, stay inside, be just a wife and breed children ... Education for girls, which was promoted in the past decades, is declining’ (Cordaid 2018). As

Libya remains in a transitional limbo with the status of various laws and institutions debated, there is uncertainty too for Libya's women about their rights, including their right to inherit. Yet amidst this uncertainty, life and death continue, forcing families to answer anew the perennial questions around inheritance. This case study will consider in depth one such case.

This paper focuses on three research questions:

1. How, why, and to what extent do women in eastern Libya who are legally entitled to inherit land claim this right?
2. What obstacles and opportunities do Libyan women encounter when they try to claim their inheritance?
3. What are the legal and social consequences of these women's justice journey?

To answer these questions, this paper relies on two methods. First, Bruno Braak carried out a literature study on disinheritance and attempts to combat the practice in Libya, and in its neighbouring Muslim-majority countries. Later several papers on Sub-Saharan countries and one on India were included for a comparative perspective. While the differences between these countries are enormous, they all know a form of disinheritance, and several have attempted to use law to combat the practice. Second, Suliman Ibrahim conducted seven semi-structured interviews in the greater Benghazi area in March and June 2022. Respondents included the main disputants – family members of Suliman Ibrahim – and a religious leader, a court of appeal judge, and a notary. We prepared interview questions for each respondent and posed follow-up questions. Suliman Ibrahim is Libyan and related to Um Aliz. This positionality has had advantages – such as his access to an otherwise sensitive subject, and intimate understanding of the subject matter and its relevant contexts – but also disadvantages – particularly that some family members distrusted his intention for conducting this research. His partnership with a foreign researcher helped somewhat to alleviate his family's concerns. Both authors cooperated in designing and analysing the interview material and situating it in the wider academic literature. Bruno Braak then wrote the first draft of this paper with Suliman Ibrahim providing elaborate comments and corrections.

Research ethics were a central concern throughout this research. Benghazi University does not have a research ethics committee. The case selection, research design, and methods were discussed at length with a data steward and four professors on our research project. Before each interview, Suliman Ibrahim discussed informed consent with all respondents. We have anonymised everyone to avoid too easy identification of our respondents. As the relations between kinship and property claims are a central focus in this paper, we have kept unchanged the names of the lands, tribe, sub-

tribe, and extended family. These lands are vast, the group of people is large, and inheritance disputes are common. This will mean that probably only our respondents – knowing that we interviewed them for this paper – would be able to recognise themselves. Then again, nothing in this paper's description of the dispute will be news for our respondents or even for the communities around them. Further, the paper is written in English which is not very accessible for people in this area, most of whom do not read (academic) English. In sum: Our respondents consented to sharing their accounts for this paper and they – and we – deemed the risk that this would negatively impact them negligible.

This case study proceeds by offering a short history of land law and disinheritance in Libya. Next, Um Aliz, the disputed land, and the dispute are described. Our analysis draws on 'the transformation of disputes' (Felstiner, Abel, and Sarat 1981) and focuses on the steps, obstacles, and opportunities Um Aliz faced while claiming inheritance. Particular attention is devoted to those developments that helped Um Aliz overcome her initial trepidation. Then the paper offers some local expert analyses of the case, and of disinheritance in Libya, (legal) approaches to combat it, and changing societal dynamics which are emboldening some Libyan women to claim their inheritance. The conclusion answers the research questions, summarises this paper's main findings, and offers suggestions for future research and policy.

2. A short history of land law in Libya

Libya's geography has shaped its traditional land tenure systems. The eastern region of Cyrenaica can roughly be divided in the red soil of the forested mountains on the Mediterranean coast, and the white soil of the steppe plains further South. The latter are dry and vast, and have historically been used by (semi-)nomadic Bedouins with their camels and sheep. As land was abundant but water scarce in this area, the ownership of land was less important than the ownership of wells and access to water (Evans-Pritchard 1963, 34). The smaller, more elevated northern areas closer to the coast have more spring water and precipitation, allowing for the cultivation of barley and other crops, and the keeping of cows and sheep. These livelihoods are historically associated with a more sedentary life, and so land ownership and boundaries have historically been more clearly defined.

After the Arab conquest of Libya in the 7th century and especially after the 1050-51 Hilalian migration, land in Cyrenaica became owned collectively by Sa'adi tribes (Evans-Pritchard 1963, 51). Tribal elders would allocate usufruct rights to their members (Hilal 1969). Initially, such land rights were bound to a period (e.g. a season or lifetime) and could not be inherited to avoid land fragmentation. Crucially, tribal belonging would have entitled a person to usufruct rights over *a* piece of land, not to a *specific* plot. In the words of a

religious sheikh: 'whoever wanted to plough the land could do so ... But this right was not related to a specific part of the land'. Land was thus closely tied to a person's tribal belonging and ability to work the land.

When the Ottoman Empire arrived in Cyrenaica in 1517, its control was first limited to the principal towns (VandeWalle 2012, 16). Initially, it relied on local leaders to control the land and people beyond, requiring only that tribute would be paid in a quasi-feudal system. Several centuries later, in the second half of the nineteenth century, the Ottomans' governing ambitions grew, and they wanted 'to collect taxes efficiently, directly through individuals, and without village and tribal heads as intermediaries' (Ahmida 1994, 36). In this context, the Land Law (1858) introduced the registration of land. It recognised five types of land: 'privately owned land (*mulk*); state land (*miri* or *kharja*); religious endowment land (*waqf*); 'no man's land' (*matruka*); and 'dead' land (*mawat*)' (Ahmida 1994, 35). On *miri* land, the Land Law made a crucial distinction between: (i) the full ownership rights to the land – also known as the 'neck of the land' (Arabic: *raqaba*) – including the right to dispose of it, sell it, or gift it; and (ii) the usufruct rights. The Ottoman legislation held that the former belonged to the emir, while the latter could be exercised by the occupant(s). Administratively, the Land Law created *tabu*, bodies akin to a real estate registry, which could give landowners official documentation (the *tabu* paper), akin to a real estate certificate. At the footer of the *tabu* paper was a stamp resembling a beetle (Arabic: *khuṇfusā*). This stamp signified official recognition of ownership, and is to this day invoked by people claiming long-term owners of land. The Ottoman state encouraged people to register for *mulk* land rights. Two advantages of such a *tabu* paper were that people could use them to obtain loans and that it promised tenure security.

The Ottoman Empire was the first to introduce in Libya the notion that all unregistered land, including tribal land, would become land of the *emir*, essentially state land. By not recognising tribal land, the state also encouraged people to attribute more importance to their familial than tribal belonging. Further, by recognising individual titles, the Ottoman government encouraged people to make durable, even inheritable claims to *specific* pieces of land – as opposed to the preceding unspecified right to *a* piece of land. A similar shift appears to have taken place in areas not under direct Ottoman control, where lands originally held by tribes became increasingly regarded as lands of a particular sub-section or family, and ultimately even as the lands of particular individuals. In the words of the religious sheikh, 'people became accustomed to ploughing a land whose face we know'. Adding also that, 'This shift from tribal to individual went through a shift from tribal to family first'. The same happened with the land at the heart of this case study: It was initially part of Awaqir tribal land, but over time became the inheritable property of particular families, and later of particular family members.

Crucially, the Ottoman state administration, like many of its successors in Libya, had limited capacity to enforce laws. It only effectively occupied Libya's coastal strip and especially further inland tribes continued to use and claim land much as before, and in defiance of the Ottoman claims to power and law (Hilal 1969). And so, 'in reality a combination of local tribal customs and Ottoman laws coexisted' (Ahmida 1994, 37). This would be a recurrent theme in the century to come.

When Italy occupied large parts of Libya from 1911, it argued that it was the successor of the Ottomans and thereby the legitimate owner of all 'emir land' (Ibrahim and Otto 2017, 2). Colonial officials then debated the status of tribal land. Some, including a judge who headed the real property registration authority in Cyrenaica, argued, based partly on interpretations of sharia, that tribal land was privately owned by the tribes. Hence, the Italian colonial authorities would have to purchase the land from those tribes. Others argued that tribal land was 'emir land', that the state had held full ownership (Arabic: *raqaba*) of such lands, and that tribes had only enjoyed usufruct rights. The state could then assign this right to whoever it chose – including to Italian settlers ('Abd al-Ġawād 1974). It appears that the latter logic prevailed. The Italian administration dispossessed many Libyans from the most valuable agricultural land, allocating roughly 180,000 acres to Italian settlers between 1914 and 1929 alone (VandeWalle 2012, 32).

When Libya became independent in 1951, the Kingdom changed little about land tenure. One elder said, 'The same official who was registering lands for the Italians continued to register them for the Libyan'. Some in post-independence Libya saw tribal land ownership as an obstacle to development and lobbied for its abolition, but the King needed tribes' loyalty. Rather than take an unpopular decision, the King appointed a committee to study the matter. When this committee recommended that the King abolish tribal ownership of land, the King did not adopt it. Later the Food and Agriculture Organisation (FAO) was also invited to advise on land tenure reform, but before its recommendations could have been implemented, the Kingdom was overthrown during the September Revolution of 1969.

Whereas the King had relied on tribal support in Eastern Libya and could not act against tribal land ownership, Gaddafi had a different agenda. He wanted, initially at least, to undermine the tribes that had supported the Kingdom. And so, his regime issued Law 123 (1970), and Law 142 (1970), which added strict requirements for tribal property and generally promoted a move to individual holdings (Ibrahim and Otto 2017, 5).⁵ There were three scenarios. First, if land had not been registered as 'tribal land' before – which was the vast majority – it now became state property. Second, if land had been disputed before but was registered as 'tribal land' after the decision

of a conflict resolution committee⁶, then it also became state property. Third, if land had been registered as 'tribal land' based on purchase or long-time possession, then such land would remain 'tribal land'. This applied, for example, to land bought by the Werfala tribe from the Ottoman *Bayt al-Mal*, a state institution (Abu Raas 2017). Effectively, this meant that very little state-recognised tribal land remained. Land tenure faced another drastic reform in 1986 when the Gaddafi regime abolished private ownership of land altogether, enshrining in law instead that 'Everyone has the right to use or to benefit from [land] by working, farming or using it for pasture'.⁷

Since the fall of Gaddafi in 2011 amidst violent power struggles, the legitimacy of both old and new legislation has been partial and contested. One hotly debated law is Law 123 (1970) with which the Gaddafi regime redistributed land of tribes and landholders to individuals. Many former (pre-1970) owners and their offspring now argue that Law 123, like the Gaddafi-regime, was illegitimate and ought to be abolished, whereas the new occupants argue against such an abolition. One argument they use, is that Libyan society has changed since 1970. The cities have grown enormously, and, in some respects, Libyan society became less tribal. In the eyes of some, a reversal of Law 123 would signal a return to the pre-1970 status quo, in which the tribes controlled vast lands and powers to boot.

Today land tenure in Libya remains unclear. Does tribal property – *raqaba* or usufruct – still, or perhaps *again*, exist? And if so, where are its boundaries? What rights do occupants and other users have, and what about the rights of women? How is tribal land regulated, and by whom? And what is the legal status of the lands affected by Gaddafi-era laws such as 123 (1970), 142 (1970), 4 (1978), and 38 (1978)? In the absence of clear legislation, across Libya a wide variety of land tenure practices persist, and land disputes proliferate (Ibrahim 2017; Ibrahim and Otto 2017). In 2011, the National Transitional Council suspended all land registrations to avoid problems, and this suspension remains in force at the time of writing (*The Decision of the NTC on the Reorganisation and Determination of the Work Conditions at the Authority for Real Property Registration and State Property* 2011).⁸ Yet in practice people have continued to transact land. As we will see later in this paper this unclarity presents not just a legal headache, but can cause rifts between and within families.

3. Disinheritance: roots and contemporary practices

While Libyan society has changed rapidly, its inheritance laws and rights have seen remarkable legal-historical continuity. Libya has left inheritance largely up to uncoded sharia of the Maliki School.⁹ In most interpretations of sharia – including that of Libya's conservative Dar al-Ifta – women are entitled to inherit half the share of male heirs in a similar position (Bishin and Cherif 2017; Otto 2010).

The disinheritation of women – and efforts to counter it – is no modern or exclusively Libyan phenomenon. It is now difficult to ascertain when and where the practice started. One religious sheikh alleged that Libyan tribes learned this practice from Jewish minorities in the time before the Islamic conquest of eastern Libya. Indeed, disinheritation appears in the Old Testament's Book of Numbers, when Moses is presented with the case of Zelophehad who died leaving five daughters but no sons. The question is whether they can inherit land. Moses rules that the daughters should inherit, but – to assuage the tribe's fear that their land would be alienated – must also marry within the tribe of Zelophehad. Disinheritation also features in a Hadith attributed to Saad bin Abi Waqqas, a gravely ill man encouraged by the Prophet Mohammed to let his only daughter inherit a large share of his property (Siddiqui 2000). Yet the prevalence of women's disinheritation across Africa and beyond, suggests that the practice is perhaps rooted not so much in one religion or another, but rather in patrilocal cultures.

Authorities have often acted against women's disinheritation. Archival research indicates that in Ottoman times, courts in Anatolia 'routinely upheld a woman's right to property and inheritance when women challenged male circumscriptions of their rights' (Bishin and Cherif 2017, 506). In our research area in eastern Libya, the leaders of the Awaqir tribe published a charter in 1906 and again in 1946, 'to denounce that bad custom that was commonplace amongst the tribes in the Cyrenaican [east Libyan] interior, that is, the custom of disinheriting the female'.¹⁰ Contrary to contemporary juxtapositions of 'religion' and 'custom', these tribal leaders' main argument was that disinheritation was contrary to sharia. After independence, the Kingdom, too, forbade women's disinheritation. Law 6 on the Protection of Women's Right to Inheritance (1959) reaffirmed that women's inheritance rights ought to be awarded in accordance with sharia, and that the violation of this law would be 'punishable by imprisonment'.¹¹ Later, the Gaddafi regime outlawed a popular tactic of disinheriting women (see below).

Despite all these efforts by Libya's successive governments and authorities, the disinheritation of women has persisted until the present. The disinheritation of women occurs in all of Libya's three highly diverse regions (West, East, and South), although justifications and mechanisms differ. In the west, some fathers use an interpretation of the Islamic *waqf* (endowment), and argue that they are not transferring to their sons the land *ownership* or title, but the *benefits* or usufruct rights of the land. This practice has been outlawed under the Gaddafi regime in Law 16 (1973) Regarding the Abolition of Endowments for Non-Charitable Purposes, yet it remains operational to this day. This is a variation of a form of disinheritation that was common in the Ottoman Empire, where fathers would 'disinherit their daughters by, for example, providing their sons with gifts prior to their death' (Peirce 2003).

In eastern Libya, disinheritors often draw on Bedouin customary law, in which women ought not to inherit land because: (i) then the tribal land would – through these women's patrilocal marriages – end up in the hands of strangers (Arabic: *barani*); and (ii) then the land would get fragmented which would weaken the group, undermine agricultural productivity, and lead to conflicts among the owners. The influential leader of the Al-Bara'asa tribe, Sheikh Omar Gilghaf, stated in the early nineteenth century that Bedouin women in Cyrenaica ought not inherit immoveable property, but that they could inherit moveable property – gold, silver, household items (Ashhab 1947). This Bedouin customary law mirrors the reasoning mentioned in the Old Testament, which remains common in patrilocal societies across Sub-Saharan Africa (Odeny 2013). The outcome of both logics – the Islamic *waqf*-based western one and the tribal tenure-based eastern one – is the same: many women are obstructed from inheriting land.

Disinheritance is especially prevalent on unregistered or 'tribal' land, but also occurs on registered land in the cities. This occurs in two main ways first, women can be excluded from the inheritance processes, for instance when families prepare the 'lawful division of the shares' (Arabic: *farīḍat shā'irāt*). This division is made in a statement is issued by a judge upon the request of the heirs or their representative. In this process, the judge relies on testimonies, which are not always accurate.¹² The heirs or representatives then take this statement to the notary. Some notaries verify the legal statement, by for instance checking if men excluded their female relatives or by asking for the family booklet. But this check is not a legal requirement, and many notaries do not perform it. Second, even when women have been consulted, they may be intimidated or strong-armed by male relatives into accepting unfavourable terms. In short, the involvement of judges and notaries during the inheritance process does not guarantee a fair division of the inheritance, and neither do the presence and signatures of the female heirs.

Disinheritance elsewhere is often seen to be a predominantly rural phenomenon (Moors 1996). Whereas Libya used to be an overwhelmingly rural society and economy, this changes after independence and particularly after the oil boom. Yet processes of modernisation, urbanisation, and monetisation did not affect everyone equally. In the 1970s, one female Libyan scholar argued that some Libyan women remained 'traditional', others became 'modern', and a third and largest group became 'transitional'; 'those urbanised individuals whose inner life may still be close to the traditionals' (Fikry 1978, 70). Since that time, the predominantly rural Libyan society has urbanised at break-neck speed: the share of Libyans living in urban areas rose from 20 percent in 1950 to some 80 percent in 2018 (United Nations DESA Population Division, 2018). Most people live modern and monetised lives and many elements of the traditional order have

changed. It is largely because of land's very modern monetisation and skyrocketed value, that people are more interested in owning it – yet in staking their exclusionary claims men often continue to invoke traditional and patrilocally-based logics to disinherit their female relatives. We will see in Um Aliz's case how stereotypically 'modern' and 'traditional' elements coalesce and clash in women's disinheritance on the urban frontier.

Yet things appear to be changing. In recent times, women are sometimes not deprived entirely of inheritance but offered a monetary compensation instead of their share of the land. This change is sometimes attributed to growing 'religious awareness' of the aforementioned sharia division of inheritance, and sometimes to better education. But a judge in Benghazi interviewed for this chapter explained that this monetary compensation is often also unfair: 'Real estate in Libya is considered insurance against the future as a cache (Arabic: *khabīyāt*), as its price usually increases. Therefore, the woman, if she really had a choice, would prefer to obtain the property instead of a monetary compensation. Still, resorting to compensation remains a kind of development'. This paper continues with the case of one woman, Um Aliz, who after decades of silence decided to claim her inheritance. The life of Um Aliz and the history of the disputed plot of land are illustrative of larger changes in Libyan society, which we will return to in the conclusion.

4. The case of Um Aliz: the family and its land

Um Aliz was born in the 1950s in the lands called Al-Fayd where the cave (Libyan Arabic: *haqft*) of al-Tira is located. Despite its proximity to Benina airport and the city of Benghazi, the area was rural. Land was abundant and people often claimed large swaths. It was no desert, and its red soil and limited rain made barley cultivation possible. Um Aliz recalls how when she was born her family, 'were doing everything on the land, our lives were in it'.

But in the ensuing years most of the family members left the land. Especially after Libya discovered oil in 1959, jobs were elsewhere: in the state or the booming oil industry. One by one, her father Abdullah's offspring left for jobs in the towns. One brother, Abdulhamid, joined a transport company in Benghazi, another, Asad, joined the army and moved around Libya. The family did not sell the land and returned periodically to cultivate barley. Abdulhamid also sold grazing rights to cattle keepers and some of the land's water. Otherwise, the land lay uninhabited until the time of writing as the family members pursued lives and livelihoods elsewhere.

Here it is important to briefly explain Um Aliz's relations to different concentric circles of family a few generations back, to understand how she can claim inheritance. Um Aliz is part of the al-Awaqir tribe (Arabic: *qabila*), the

Ibrahim sub-tribe (Arabic: *bayt*), and the Al-Sahati large extended family (Arabic: *ʿayla*).¹³ The Al-Sahati counts four extended families, one of which is Um al-Fadil. That extended family is in turn divided into three families: Ayt Mahmud, Ayt Ali, and Ayt Al-Fazzani.¹⁴ Um Aliz belongs to the second family from her father's side and the first family from her mother's side. Ali had two sons: Abdulkader and Abdulrahman. Abdulrahman left only one daughter, Amina. Abdulkader left many heirs among whom Um Aliz. Um Aliz's maternal grandfather was Moncef (d. 1963), son of Mahmud. Moncef had two children: Mabrouka (d. 1973), mother of Um Aliz and Imran (d. 2014); and Maha (d. 1974) who married a man from the Qatrani family and had eight children among whom two daughters who would prove key advocates for women's rights to land: Maha and Mabrouka. Because Um Aliz' parents married within this large family, she was technically entitled to inherit both from her father's and mother's side, even if for many years she refrained from claiming her rightful inheritance.

Grandfather Moncef had lands not only in Al-Fayd, but also in Jardina.¹⁵ Customarily, such family land would have been divided among the heirs of every owner successively. This partible inheritance tradition meant that when people held multiple properties, like Moncef, these would each be split up (not distributed wholly) among the heirs. In other words, if a father would have had two plots of land and two sons, upon his death each son would inherit two half plots rather than one full one. Logically, if there were few heirs their portion would be large and if the heirs were many each portion would be small. This practice combined with relatively large family sizes, has meant a general land fragmentation in rural Libya.

5. Women claiming inheritance, or not

The family held land, and Um Aliz and her female relatives wanted to inherit their shares. It is important to understand at this stage why so many Libyan women have been reluctant to claim their inheritance rights. When asked why she did not claim her inheritance, Um Aliz said that her father Abdullah would always say, 'a woman married to a foreigner (Arabic: *barani*) does not inherit'. Crucially, not only non-Libyans qualified as 'foreigner' in this logic, but also people of other families – for instance those who generations back had migrated from western to eastern Libya. The reasoning behind this expression was that families should ensure that their land remains within the family. So, when Um Aliz married to a person from outside the larger Al-Sahati family, in this logic she lost her right to inherit land. On a critical note: Um Aliz's sister was married to a cousin, but she did not inherit land either. Another female family member stressed that Anis (the male relative who claimed the land) tried to paint his female relatives' children as *barani* or from western Libya (Arabic: *ghurāba*) to deny their inheritance rights.

Further, many women know that these traditional beliefs and practices conflict with Islam. An elder woman said: '[disinheritance] is a major sin for which the person will be held accountable on the Day of Resurrection'. Her daughter added: 'whoever prays, fears God and will give everyone their due rights. Whoever does not pray, does not fear God'. So in Libya, too, some women look to Islamic law for its emancipatory potential in inheritance matters.

Even if Libyan women consider disinheritance wrong, their social environment often expects them to remain modest and not to act in a shameful or inappropriate way (Arabic: *'aḡb*). Um Aliz' brothers never spoke to her about her inheritance and she was too modest and ashamed to bring it up or demand anything from her older brother and his sons. A female relative of Um Aliz echoed this sentiment: 'What do we do? Should we demand our rights from men? If they give it to us, we receive it. But if they do not give it to us, then the provision is from God ...' Many women felt that it was upon their male relatives to accord them their rightful inheritance, but that it would be shameful for the women to ask anything.

Libyan women have also refrained from claiming their inheritance, to avoid jeopardising their good relations with their male relatives. Because should a woman get into conflict with her husband, she might customarily move to her family's house – often that of her brothers – so she may be dependent on them in the future. A notary in Benghazi recalled how one man disinherited his three sisters who feared doing anything against this because, 'He was their protection and support in the face of life's circumstances'. If women insist on claiming their share of the inheritance, they fear jeopardising that future safety net.¹⁶

Yet a handful of women began to resist disinheritance decades ago. The first woman in the family to claim her inheritance in defiance of male relatives, was Amina, Um Aliz's grandfather's cousin. In a move unique at the time, she claimed her share of the inheritance from Abdullah on his deathbed. In the early 2000s, other women of the Sahati family, too, demanded a share in the inheritance. Some were given plots of land, others were given money or sheep, often at a fraction of the land's value.

By most accounts, women's resistance to disinheritance is becoming more common. One facet driving this change is economic. Land prices have soared across Libya, partly due to money laundering (Al-Shanbashi 2020). The increase has been especially rapid in the Jardina and Al-Fayd areas due to three factors. First, already prior to the 2011 revolution, the Jardina area was connected to the Man-Made River, a vast irrigation system, which brought more water to the area. Large water storage containers were built, and farmers could cultivate other crops than barley. Second, from 2014 General Khalifa Haftar, commander of the Libyan National Army (LNA), set up his headquarters at Al Rajmah, attracting an influx of people into the

nearby Al-Fayd area. Third, the Jardina area is close to Benghazi, a city which has roughly doubled in size between 2009 and 2019 alone (AFP 2021). The city's well-to-do were increasingly looking for rural places to spend the weekend. These three factors made the land more expensive. By way of illustration, a part of the family land near Jardina was sold in the 1990s for 3.000 Libyan dinars, and in 2021 for 90.000 Libyan dinars. These skyrocketing land prices often lead to disputes within families over land ownership and inheritance, including in Um Aliz's family.

Women's attitudes are also changing, with some women feeling more confident to claim their inheritance rights. Sometimes the change is generational, and '[women's] children encourage them to demand!' Um Aliz's son Tarek had indeed encouraged her to claim her inheritance. The fact that her children had matured and married, also meant that Um Aliz had an important alternative safety net in case anyone would need to provide for her; a role that would earlier be played by her brothers. But Um Aliz also mentioned the trailblazing claiming by her female maternal cousin Salima who came to her three times to talk about the inheritance: 'They said they would not leave their mother's share ... And I said what you are doing, I agree with it [that I run with it]'. Had it not been for these cousins, Um Aliz said that she would probably not have claimed anything. This way, her cousins ran most of the social risks – which were minimal because they belonged to a different family – while Um Aliz was just a co-signatory who would benefit from a favourable ruling without being a plaintiff or instigator. Another more personal factor spurring Um Aliz into action was her recent poverty and illness: she urgently needed money to get medical treatment, and this inheritance could help her in a big way.

Um Aliz's trailblazing cousins, the Qatarnahs, initially turned to Anis, the current occupant of the Al Fayd-land to claim their share of the land. Yet Anis insisted that his father Abdulhamid (Um Aliz's brother) was allocated the Al Fayd-land under Law 123/1970, Gaddafi's redistribution law. Anis claimed that he simply inherited his father's land in 2014, and that the members of the wider family including all other offspring of Moncef no longer had valid claims to inherit the land because since Law 123 the land should no longer be considered family land. In a somewhat wily tactic, Anis pointed out that the Qatarnahs might have better chances of claiming their inheritance from their grandfather's other property in Jardina. And so, they went to Jardina.

The land in Jardina was uninhabited and so the Qatarnahs approached Walid, a cousin of Um Aliz, who often represented the family in land matters. Yet he rejected the Qatarnahs' claim. Walid asserted that Moncef had already sold his share of the land to another family of the al-Baraghta tribe. Thus, his heirs would no longer have a claim to inherit part of this land, and the heirs of the Jardina plot remained only Ayt Ali and Ayt al-

Fazzani. Asad Abdullah, Um Aliz's brother, agreed with Walid that Moncef had sold his share. To him, the land, which is around 70 hectares, should be divided into three thirds, one for the Ayt Al-Fazzani and two for Ayt Ali. Amina Abdulrahman Ali inherited a large share but sold it. For the rest, it should be divided between Abdu Al-Wahid Ahmed – on the condition that he would give his aunt Saeda her share – and Abdullah, which were to be divided among his children, including Um Aliz. Moncef's heirs contended that Jardina was never only Moncef's property, so that he would not have been able to sell all of the land – let alone to another family and without his family's consent.

In sum: On both lands a series of undocumented and contested land transactions were alleged to have (not) taken place. The dispute about present ownership was thereby inevitably about past tenure arrangements, and even the legitimacy of the Gaddafi regime. The absence of paper proof or communal consensus left family members at loggerheads over these lands.

Back to the dispute. Initially the Qatarnahs' objective was for all the heirs to sign an updated statement of succession, which lists all heirs, including Moncef in this case. But Anis and Walid refused by arguing, each based on their own logic, that Moncef was not entitled to inherit the land. Anis argued that the land had become private property in accordance with Law 123. Walid argued that Moncef had sold the land. To mediate in the dispute, the Qatarnahs involved Sheikh Hakim, a well-respected member of the Al-Sahati family and religious sheikh. But all to no effect.

Met with the intransigence of both cousins, the Qatarnahs chose a more antagonistic route. Together with another cousin, Ismail Imran, who is also Um Aliz's nephew, they hired a female private lawyer, on behalf of all the deprived heirs – including Um Aliz. They paid the lawyer 7,000 Libyan dinars up front and promised another 8,000 Libyan dinars if the case would be won. Ismail Imran paid the advance and the deprived family members agreed to pay him once the land would be won. For Um Aliz this course of action was far preferable from pursuing the case on her own. Now she could simply join her cousins and nephew at relatively little risk and expense by signing the proof of heirs and legal obligation. She remained her humble demeanour, but should the Qatarnahs win, she would win, too.

The court case was still ongoing at the time of writing, but Um Aliz and her son Tarek felt ambivalent already. They did believe this turn to the court was inevitable given Anis's behaviour. Um Aliz: 'He is the one who spoiled the subject by claiming that Moncef had sold. [Anis's] goal is to swallow the land. He will not be deterred except by law'. Tarek agreed that Anis 'could have resolved the issue amicably, and kept the land of al-Fayd' but that his refusal to sign the statement of succession prompted the Qatarnah to make demands in all the lands – in both Al-Fayd and Jardina. Um Aliz and her son Tarek had high hopes about the court case. They expected that

the judge would ask Anis for paper proof to evidence his claims about Moncef's sale of the land, something they believed Anis would not have. Um Aliz and her son also expected that if this case would be won and she would inherit from her mother's side, she would also receive her inheritance from her father's side – which was after all on the same plot of land.

Despite her optimism over winning her share of the land, Um Aliz felt uneasy about going to court over a family matter; 'In the name of God, we should not have these problems but what can we do?' The dispute had already affected family relations. Perhaps the least of it, her son Tarek said, '[Anis] no longer greets me, and I do not greet him'. And Um Aliz was hurt when Anis did not attend her daughter's marriage: 'He brought his wife, but declined to enter. Why? We only want our right (Libyan Arabic: *nubuha haq*). This is not a mistake in God's law. There is nothing wrong with (demanding) the right that God has given'. At the time of writing, November 2023, the court has yet to rule in this case.

6. Local expert analyses: obstacles to be overcome

Um Aliz's story illustrates that Libyan women face countless obstacles on the road to court: from 'naming, blaming, and claiming' to the actual access to the forums and the enforcement of rulings. At the earliest stages, many women – like Um Aliz – are simply not aware of their rights to inherit, and so they do not 'name' their problem as an injustice. Even when they know their rights, women are often discouraged from 'claiming' anything from their relatives out of an engrained sense that women ought to be modest and undemanding. In the words of a religious sheikh and inheritance expert: 'If a woman demands her right, she will get it. Shame and fear are what prevent her, even in cities, from claiming her rights'.

If a woman decides to 'claim' her inheritance, there are more and less socially acceptable paths for doing so. The Qatarnahs began by directly asking their male relatives (i.e. 'claiming') but when those refused, involved a sheikh with close ties to the family. Yet sheikhs may not be keen to intervene in disinheritance disputes. One religious sheikh interviewed for this paper said countless women come to him and that he counsels them on their rights. He advises them to try the amicable route through family and the tribal sheikhs first, 'Then if she has done everything ... no one can blame her if she goes to court'. Yet he stressed that wanted to avoid getting involved: 'If I had intervened in every case that was presented to me, I would have spent my life every day in a [disputant's] house [resolving problems]'. Only after direct claiming and a call on the sheikh's authority had failed, did the Qatarnahs turn to court.

The judicial route obviously necessitates a good lawyer because Libya's legal system and Islamic inheritance law are complicated. Many women do

not have enough money to hire an expensive private lawyer, so they go to a free public lawyer whose technical capabilities are typically better suited for criminal cases than for highly technical inheritance matters. Um Aliz's relatives hired an expensive private lawyer, and were optimistic that victory was now at hand. But was it?

According to a Benghazi judge, inheritance cases are complex and not all judges are competent to resolve them. He pointed to two key weaknesses in the process: First, the court often encourages the heirs to reach an agreement about the division of the estate. Enforcement here should be faster given that there is no need to involve the Real Estate Registration Authority, whose services have been suspended since 2011. But the problem here is that judges have limited legal room to check whether women consented freely to such an agreement or were coerced in one way or another. Second, often the judge will depend on an external expert, most notably the liquidator who will handle the estate, settle outstanding debts, compile an inventory, and distribute the remaining property to the heirs. This person plays a critical role in those inheritance cases which have reached court, and yet the judge indicated three weaknesses: first, that these liquidators are often selected from outdated lists; second, that there is no formal limit to the time they can work on the case; and third, that there is no feedback from the judge's impression of the expert's work, to that expert's being on the list. When this judge arrived at Benghazi's North Court, he found cases which were handed to liquidators a decade ago but remained unresolved.

The delays in inheritance cases typically suit current occupants well. In Um Aliz's case the two cousins inhabit disputed land, and benefit from maintaining the status quo. The judge explains:

[Defendants] ask to stop the progress of the case because part of the elements of the estate is based on documents they claim are forged ... they ask to stop the progress of the case until the authenticity of the documents is verified through original or subsidiary forgery claims. Or they question the heirs who claim that there are other heirs, such as a son of the testator who was not known, or question the validity of the mother's bequeathing because the testator had divorced her ... In most cases, there is a person who possesses the inheritance and wants the status quo to continue.

Such delaying tactics are often successful, and this is not helped by the absence in the Libyan judiciary of maximum periods for adjudicating cases – and of penalties for delays. There has been a successful attempt by a Benghazi-based court upheld by the Supreme Court to impose such penalties for criminal cases, but not in civil cases such as those related to inheritance.

Even if a woman would overcome all these obstacles and 'get her right', an important new problem emerges: enforcement. The enforcement of court rulings related to real estate requires the involvement of the registry – but that has been closed following a National Transitional Council-decision in

2011. Since then, many court rulings have remained unimplemented. Despite the time and money spent, and social relationships risked, a woman may find herself with a favourable court ruling but nonetheless empty-handed. The tribal or religious authorities whom she may turn to, may equally struggle to convince the current occupant – often her male relatives – to hand over her share of the land. The religious sheikh we interviewed summed it up soberly: ‘If her brothers do not fear God and her right is crystal clear, will they fear me?’

And when enforcement succeeds, too, there is a final problem. How will the woman’s actions be perceived by her social environment? A notary in Benghazi recounted the case of discriminatory inheritance: the sons got real estate, the daughters a much smaller amount of money. One of the daughters went to a lawyer, and got her brothers to give her a larger amount. But then, ‘The other sisters blamed her for her actions. They told her, ‘Why are you doing this to our brothers?’ It was this, the social backlash, which trumped other considerations in the eyes of a female relative of Um Aliz:

No, it is shameful to complain about our brothers. The women of a nearby family filed a complaint against their brothers and obtained their rights, but their brothers hated them. We cannot talk to Anis, because he will hate us just as he hates Tarek. [son of Um Aliz]

And so whether Libyan women claim their inheritance rights, depends on several factors and considerations: past, present, and future family relations; economic concerns and hopes; social and religious norms; local precedents of trailblazers and trouble-makers; and the availability of sympathetic lawyers, notaries, and judges who aid the women’s efforts or check those of their male relatives.

7. Conclusion and three suggestions for future research, law, and policy

This paper has explored what, if anything, Libyan women who are entitled to inherit land do to claim their right. To understand disinherited women’s perceptions and experiences both of the original injustice and the subsequent ‘justice journey’, we used an adaptation of the ‘transformation of disputes’-framework by Felstiner, Abel, and Sarat (1981). This framework allowed us to see not just what happens in court, but especially what happens before: including the debates that women have amongst themselves.

Our central case study about Um Aliz shows a nuanced picture. On the one hand, Um Aliz, like many women around the world, initially chose *not* to claim anything. Although she thought that she had a right to a part of her grandfather’s inheritance, she made no claim to it because she felt that she must

always be modest and avoid shame. Yet in recent years, several developments have encouraged Um Aliz to make her claim: her personal hardship, her children's encouragements, her female relatives' pioneering efforts to claim their rightful inheritance, society's changing ideas about women's land rights, and rising land prices. Still, rather than directly confronting her brothers, she preferred to latch on to other relatives' litigation efforts in a more tactical and less prominent role. The court is yet to rule in the case. Um Aliz and her son were optimistic, but other relatives feared that a favourable court ruling would be difficult to enforce and, more so, would anger the male relatives.

This paper's focus on one case study limits our ability to generalise or to compare disinheritance across Libyan regions. Yet the strength of this single case study-approach is that it reveals just how complicated a single land dispute and its underlying family relations can be. This sensitive subject is rarely openly discussed – even between siblings – and so everyone has a different story. This case study has also demonstrated that even within the same family, women may respond differently to disinheritance, and that those differential responses are the subject to lively debate. When women consider claiming their right to inherit land, they must weigh not just their chances and the obstacles on their likely prolonged justice journey, but also the risk of ending up with an unenforceable court ruling and a social backlash for taking their kin to court.

In Libya, as elsewhere, land tenure is intimately connected to larger societal debates about identity and belonging (Lund 2011). Throughout Libya's history, different (colonial) governments, religious authorities, and tribal authorities have competed to control and reconfigure the bonds between land and people. When land is owned and distributed primarily by families and tribes, this bolsters the importance of group belonging and the authority of its leaders. When collectively-owned land is individualised or 'fragmented' – through individual registration, female inheritance, or transactions – this may reinforce the individualisation of society or strengthen other group belongings such as religious or national citizenship. Such questions of identity also interact with demographic and economic changes.

Future research might study some of the exploratory insights from this qualitative study in a more quantitative manner to arrive at more generalisable findings about disinheritance, its underlying factors, and trends in litigation. Three avenues may be worth exploring. First, notaries are involved in the transaction of real estate and might have quantitative or quantifiable data related to (gendered) ownership. Should one get access to their records, one might quantify how often land is owned by sons alone, or by sons and daughters both, and also what the shares of each are. This would be intensive research and require access to sensitive data. Second, from courts one might get quantifiable data on inheritance-related litigation. How do disinheritance

cases enter the court records? Do women open such cases or do male relatives do it on their behalf? And what are the outcomes of such processes? Follow-up qualitative research could investigate what has happened to disinheritance cases after the court ruling. Third, through a survey among the wider Libyan population one could study Libyans' general attitudes towards disinheritance. If that survey sample were big enough, one could even imagine a follow-up survey of the sub-group of women who did not inherit about their experiences and perceptions.

Such future research would provide a stronger basis for policy suggestions than our present single case study. Yet during this study we interviewed two Libyans experts with decades of experience who proposed practical ideas for reform. We share those ideas here. First, the Court of Appeal judge argued for the establishment of a 'special inheritance circuit' with specialised judges. He also argued that the work of the court-appointed external experts such as liquidators, ought to be monitored more closely. He also said that the state ought to be penalised when it fails to adjudicate cases within a reasonable period. The snail's pace of litigation often plays into the hands of those who benefit from the unclear status quo – often the male occupants – who use a variety of delaying tactics to stay on the land. Second, the notary advocated for an awareness-raising campaign through mosques and radio programmes about women's Islamic right to inherit. Such a programme could also speak about the apparent consensus among tribal, religious, and legal scholars about the illegality of disinheritance, and tell people that there is no shame in women demanding inheritance rights.

Notes

1. Libya has no statutory law on inheritance and refers to uncoded rules of sharia on this matter. Although it acceded to CEDAW in 1989, it entered reservations concerning 'article 2 concerning non-discrimination in relation to the right to inheritance and article 16 (c) and (d) relating to marriage and divorce. Reservations were made on the ground that both articles need to be interpreted and implemented in accordance with provisions of the Shari'a' (Jurasz 2013, 131).
2. We wrote this article in English. We sometimes include in italics the original Arabic or Turkish term that was used by our respondents or in the law. We transliterated the Arabic with <https://transliterate.arabicalphabet.net/>. Some terms are part of Libyan dialect, others (e.g., 'āyila, bayt, qabīla) are used differently within Libya and across the Arabic-speaking world. The Turkish terms derive from the Ottoman time in Libya, and their use has sometimes changed since then. Our translation refers to present conceptualizations (not original intent).
3. In Libya, people can submit questions to Dar al Ifta online. The question and responding advice (fatwa) are then posted, too. Since re-establishing Dar al-Ifta in 2012, there have been many questions related to (dis)inheritance: e.g. about making a will excluding female heirs, about *waqf* for males, about dividing property among sons and not daughters.

4. There was a proposal in Tunisia to equalise the shares, with the Mufti speaking out in support of this effort. Egypt's Al Azhar University spoke out against this reform arguing, among other things, that 'there are four cases where the male has twice the share of the female. There are fourteen case in which the female has more. And there are thirty cases in which they are equal'. Proponents of reform point out that the four cases where men receive twice the shares of women are more common (Amin 2017).
5. Law 142 included the provisions on tribal land which effectively resulted in the state owning most tribal land. Law 123 regulated the redistribution of state-owned land, including that subject to Law 142, for agricultural purposes.
6. These were committees regulated by law which were set up to resolve disputes over tribal land and wills.
7. According to Law 7/1986 on the Abolishment of the Ownership of Land. Al-Jarida al-Rasmia (Official Gazette), Issue No 14, 3/6/1986. Article 1 of that law states that land is no one's property, but 'Everyone has the right to use or to benefit from [land] by working, farming or using it for pasture'. This law, according to Libya's Supreme Court, created a new and unique right not to ownership, but to an exceptionally strong usufruct right: people could, for example, inherit and dispose of this usufruct right.
8. This reads in Article 1: 'All acts related to disposition of property are suspended, and the role of the real estate authority is to be limited during the transitional period to administrative work, without performing procedures related to transfer, document and verify ownership or accepting registration applications'.
9. There is legislation, also based on sharia, regulating some matters related to inheritance such as Law 7/1994 on the Provisions of the Will.
10. A religious sheikh gave Suliman Ibrahim a document, best described as a charter or covenant, dated 1946 in which Awaqir tribal leaders in Benghazi condemned the practice of disinheritance. This document also referred to the 1906 charter.
11. The full copy of Law 6 'On protecting women's right to inheritance' (1959) in Arabic is available through www.lawsociety.ly. Here follows unofficial translation of key articles: Article (1): Women's inheritance and the appointment of their shares shall be in accordance with Islamic law. Article (2) It is not permissible to refrain from performing the share of inheritance that a woman deserves. Article (3): If the person who seizes the estate disputes the woman's right to inheritance or her share in it, he must do so within three months of the date of the woman's claim to her right to inheritance by requesting by a registrar, by appearing before a competent court to adjudicate the dispute. Article (4): Any inheritance due to any woman from December 25, 1951 until the introduction of this law must be performed within three months of its employment date if the inheritance is not disputed. Article (5): Any violation of the provisions of this law shall be punishable by imprisonment with a sentence of performing the inheritance a woman deserves.
12. For a legal practitioners' perspective on the problems around inheritance, refer to Juma Abdullah Abu Zeid, 'Problems of dividing inherited money in Libyan society'. Available at: <https://aladel.gov.ly/home/?p=5987>.
13. These are the original names. All other personal names have been changed to guard anonymity.
14. According to Asad Abdullah, the Al-Fazzani are the offspring of an Al-Sahati man who in the distant past set out from the Benghazi area to the far South

of Libya. He got offspring there who later returned to the Benghazi area. All of this has occurred a long time ago, as one respondent in his seventies could not recall the return of Al-Fazzani. Still, the period the 'Fazzani' spent in the South is used by some Al-Sahati to argue that they ought no longer to be entitled to shares of the family land.

15. The exact sizes of the various plots are a matter of dispute. Al-Fayd is said to be around 120 ha, 40 of which were allocated as a farm according to Law 123 to Abdulhamid, Um Aliz's brother from her father's side. However, in the lawsuit filed by Um Aliz's nephews and nieces, the Al-Fayd land is claimed to be 200 ha. The lawsuit does not offer an estimate of the size of the Jardina land, perhaps because it is still in the name of the whole Sahati family and has not yet been divided. Moncef's share of Jardina was said by Anis to be 40 ha and by Irhima to be 30 before denying that later.
16. According to Judge Fathi: 'Of course, she is satisfied, and she has in her mind the power and authority of the male, and that she may need to protect him in the future if she returns home after a dispute with her husband (Harjana) [here refers to the fact that the woman, even if she is married, may be forced in case of conflict with her husband to return to the house of Her family, and her brother represents them here, and therefore she needs to maintain a good relationship with him]'.

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- Law No. 38/1977 on Special Regulations on Real Property Ownership.
- Law No. 4/1978 on Special Regulations on Real Property Ownership.
- The Supreme Court. Civil Appeal No. 23/39, dated November 15, 1993. Technical Office, 32, p 101.
- Law No. 142/1970 on Tribal Lands and Wells.