

**ICLA**

Information, Counselling and  
Legal Assistance Programme

NORWEGIAN  
REFUGEE COUNCIL

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**PALESTINIAN REFUGEES'  
RIGHT TO INHERIT UNDER THE 2001  
AMENDMENT LAW - BEIRUT TEST CASE**



**LEBANON, JANUARY 2016**



Norwegian Refugee Council  
Information, Counselling and Legal Assistance Programme

Researched and written by the Information, Counselling and Legal Assistance (ICLA) programme, NRC Lebanon, January 2016.

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**NORWEGIAN MINISTRY  
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## I. BACKGROUND

In 2001 the Lebanese Parliament amended the Right to Real Estate Acquisition for Foreigners (1969) legislation<sup>1</sup> (hereafter referred to as the “2001 Amendment Law”) to prohibit non-Lebanese from acquiring real rights in Lebanon without a permit.<sup>2</sup> The amendment was interpreted to specifically prohibit Palestinian refugees in Lebanon from acquiring real estate property rights<sup>3</sup> (hereafter referred to as “real rights”) as they may be considered as a group of people who do not hold citizenship issued by a “recognised” state, and/or their acquisition to real rights may lead to permanent settlement (Tawteen).

In the same year this legislation was challenged by 10 Members of Parliament who brought an appeal before the Constitutional Council. However it was held that the acquisition of real estate rights by certain groups of foreigners can be prohibited and such prohibition is not a breach of the Constitution as it is in the best interest of the Lebanese people.<sup>4</sup>

The enacted 2001 Amendment Law states that:

*“No real right of any kind may be acquired by a person who does not carry citizenship issued by a recognised state or by any person, if such acquisition contradicts the provisions of the Constitution relating to the prohibition of permanent settlement (Tawteen)”.*

The 2001 Amendment Law has been widely interpreted as the effective prohibition of Palestinian refugees from having any kind of real estate rights in Lebanon,<sup>6</sup> including through inheritance.<sup>7</sup> Based on this interpretation Palestinian refugees fear that the religious endowments known as “Awkaf” or the state may take the property they are unable to inherit.

<sup>1</sup> Law No. 296 which amended the Presidential Decree of 1969 on the Right to Real Estate Acquisition for Foreigners in 2001 was published in the Official Gazette No. 15, on 5 April 2001.

<sup>2</sup> Article 1(1) of the 2001 Amendment Law states that: “No person of non-Lebanese origin and no person considered by the law as a foreigner may acquire real property rights through contract or any legal action between living people except after receiving a permit given by a Decree issued by the Council of Ministers upon the proposal of the Minister of Finance. No one shall be exempt from this law unless it is clearly written in this law or any other text.” (Unofficial translation).

<sup>3</sup> Article 1(2) of the 2001 Amendment Law states “No real right of any kind may be acquired by a person who does not have citizenship issued by a recognized state or by any person if such acquisition contradicts the provisions of the Constitution relating to the prohibition of permanent settlement [Tawteen].”

<sup>4</sup> Constitutional Council of Lebanon, decision Nr.2/2001 issued 21 May 2001.

<sup>5</sup> Unofficial translation of Article 1(2) of the 2001 Amended Law which is written in Arabic text.

<sup>6</sup> Real rights are rights attached to an object rather than a person. A real right is not restricted to real property. It can also be attached to movable property. Real rights include rights such as ownership, usage, pledge, mortgage, and servitude. Under the Real Estate Property Law No. 3339 issued on 12 November 1930, amended by the Law No. 47 issued on 24 June 1971 and the Law No. 173 issued on 14 February 2000, real rights are related to real estate and they are stated by the law, thus only the law can establish a real right.

<sup>7</sup> Prior to the 2001 Amendment Law, Palestinian refugees were able to acquire real estate rights under the same conditions as non-Lebanese.

This perception is based on unclear laws regulating the inheritance of a deceased person who has no heirs,<sup>8</sup> as it is not clear what happens to the property of deceased people in relation to distribution.<sup>9</sup>

In December 2013<sup>10</sup> the Norwegian Refugee Council (NRC), Information, Counselling and Legal Assistance Programme (ICLA) in Lebanon organised a Symposium on the “Lebanese Law on the Right to Acquisition of Real Estate by Non-Lebanese Persons.” A number of Lebanese legal professionals<sup>11</sup> at the Symposium discussed the 2001 Amendment Law and presented new ways of interpreting it.<sup>12</sup>

Based on its extensive research, the outcomes of the Symposium as well as its field work, NRC ICLA believes and argues that despite the widespread interpretation of the 2001 Amendment Law, Palestinian refugees are able to inherit. This is also documented and validated by a NRC test case which shows that Palestinian refugees are able to inherit. NRC ICLA in Lebanon invested in this “test case” to demonstrate that, despite the narrow perception of the 2001 Amendment Law, Palestinians may inherit property and register it under their names in accordance with Lebanese law.

This report presents first, the legal framework (II), second, new possible interpretations of the 2001 Amendment Law and the steps taken by NRC and the NRC beneficiary before court (III and IV), and third, the recommendations for next steps (V).

## II. OVERVIEW – LEGAL FRAMEWORK FOR PALESTINIAN REFUGEES

In order to understand the legal implications, this report provides in the following a short overview of the Lebanese legal framework.

### 1- THE CONSTITUTION OF LEBANON

The Constitution explicitly states that only Lebanese people can settle permanently in Lebanon, and thus the adopted interpretation is that only Lebanese citizens may hold real estate rights in Lebanon for the purpose of permanent residence.<sup>13</sup>

*“There shall be no segregation of people on the basis of any type of belonging, and no fragmentation, partition or settlement (Tawteen) of non-Lebanese in Lebanon.”<sup>14</sup>*

<sup>8</sup> Article 584 of the law of Qadri Basha (Ottoman Law), published in Sader electronic version in inheritance for Muslims. See also Article 21 of the Law of Inheritance of non Mohamadi's, dated 23 June 1959, published in the official Gazette number 31, date 24 June 1959. And Article 2 of decision number 275, dated 25 May 1926.

<sup>9</sup> Suhail El-Natour, Real estate ownership for Palestinian refugees in Lebanon the legal amendments (5/4/2001) and impacts on actual reality, study published by the campaign for real estate property ownership for the Palestinian refugees in Lebanon, 2012, p.69.

<sup>10</sup> The Symposium took place on 7-8 December 2013.

<sup>11</sup> The attendees included: Mrs. Hala Ariss; Mr. Haikal Badawi; Mr. Georges Chadrawi; Mr. Khalil Dahdah; Mr. Fawzat Farhat; Mr. Abdo Ghssoub; Mr. Ali Ibrahim; Mrs. Maya Majzoub; Mr. Mohammad Majzoub; Mr. Majed Mozaihem; Mr. Mamdouh Ouaidat and Mr. Tony Tajer

<sup>12</sup> Brief Report on NRC Symposium: Lebanese Law on the Right to Acquisition of Real Estate by Non-Lebanese Persons (7-8 December 2013), Beirut; Information, Counselling and Legal Assistance Programme, NRC Lebanon, May 2014.

<sup>13</sup> No Place Like Home: An Assessment of the Housing, Land and Property Rights of Palestinian Women in Camps and Gatherings in Lebanon; NRC Report, Information, Counselling and Legal Assistance Programme, NRC Lebanon, December 2013, 4.1 p.29.

<sup>14</sup> Constitution of Lebanon, Preamble (c) & (d) as amended by the 1989 Ta'if Accord, para. I.

### 2- THE LEBANESE PROPERTY LAW

As a general rule, the Lebanese Property Law,<sup>15</sup> provides that real estate ownership is only legally transmitted to someone from the date of the registration of the property in his/her name with the Real Estate Registry.<sup>16</sup> However, Lebanese law encompasses different provisions for cases of inheritance and enables heirs to inherit the property of the deceased<sup>17</sup> without any further action having to be taken, such as registration.

### 3- THE 2001 AMENDMENT LAW

According to the 2001 Amendment Law, any person who does not hold citizenship of a recognised State, or such person whose property ownership would contravene the constitutional prohibition of Tawteen, may not acquire rights in property in Lebanon, ranging from anything more than a 10-year lease to absolute ownership.<sup>18</sup>

Furthermore, any transfer of property rights must be registered at the Real Estate Registry within a 10 year period in order for it to be enforceable against third parties,<sup>19</sup> and only takes effect from the date of registration, not the date of acquisition.<sup>20</sup> Non-registration of property may lead to loss of the rights by prescription.<sup>21</sup>

Article 3(4) of the 2001 Amendment Law<sup>22</sup> explicitly exempts cases of inheritance from the general ban of the 2001 Amendment Law<sup>23</sup> to acquire real rights.

### 4- RECOGNISED STATE

In November 2008 Palestine was officially recognised as a state by Lebanon and thus one could argue Lebanon cannot perceive a Palestinian as a “person who does not carry citizenship issued by a recognised state.”<sup>24</sup>

<sup>15</sup> The Real Estate Property Law No. 3339 issued on 12 November 1930, amended by the Law No. 47 issued on 24 June 1971 and the Law No. 173 issued on 14 February 2000.

<sup>16</sup> Article 204 of the Real Estate Property Law No. 3339 issued on 12 November 1930, amended by the Law No. 47 issued on 24 June 1971 and the Law No. 173 issued on 14 February 2000.

<sup>17</sup> Article 229 Real Estate Property Law No. 3339 issued on 12 November 1930, amended by the Law No. 47 issued on 24 June 1971 and the Law No. 173 issued on 14 February 2000.

<sup>18</sup> Article 1 of the Presidential Decree 11614 of 1969, as amended by Law No. 296 of 2001.

<sup>19</sup> N. Saghieh and R. Saghieh, Legal Assessment of Housing, Land and Property Ownership, Rights and Property Law related to Palestinian Refugees in Lebanon, Norwegian Refugee Council, Lebanon, 2008, p.23.

<sup>20</sup> R. Beer, Housing, Land and Property Practices in the Palestinian Gatherings in Lebanon, Norwegian Refugee Council, Lebanon, 2011, p.12.

<sup>21</sup> By prescription is defined as “a means of acquiring an interest in land by long-standing use”. Concise Australian Legal Dictionary, 2 ed, Sydney, Butterworths, 1998, p.344.

<sup>22</sup> Article 3 Nr. 4 lit. A of the 2001 Amendment Law.

<sup>23</sup> Article 1 of the 2001 Amendment Law.

<sup>24</sup> The Lebanese cabinet also approved the establishment of full diplomatic relations with the State of Palestine in November 2008.

### III. CLOSING LEGAL LOOPHOLES - NEW WAYS OF INTERPRETATION

Based on its extensive research, its fieldwork and the outcome of the Symposium which was held on the “Lebanese Law on the Right to Acquisition of Real Estate by Non-Lebanese Persons” in December 2013, NRC ICLA argues new ways of interpreting the 2001 Amendment Law, including the following:

- Since Palestinians who did not acquire legal ownership of property they had bought as they failed to register it at the Real Estate Registry before the 2001 Amendment Law entered into force (5 April 2001), they should be able to annul the sale contract with the right to get adequate compensation for the property.
- As a general rule, Lebanese law, provides that real estate ownership is only legally transmitted to someone from the date of the registration of the property in his/her name with the Real Estate Registry. However, Lebanese law encompasses different provisions for cases of inheritance and enables heirs to inherit the property of the deceased without any further action having to be taken - in this case registration. Therefore, the restrictions set out in the 2001 Amendment Law cannot apply to Palestinians in such cases of inheritance. This can also be based on the fact that Article 1 of the 2001 Amendment Law explicitly exempts cases of inheritance from the general ban of the 2001 Amendment Law. Finally, this can be based on the fact that under the Lebanese Property Law an heir is an owner of property prior to registration. Therefore it is arguable that Palestinian heirs are owners to the property of their deceased benefactor and therefore able to inherit the real rights, despite the 2001 Amendment Law. As the 2001 Amendment Law does not address this question, the Lebanese Property Law takes precedence.
- The 2001 Amendment Law only explicitly forbids the acquisition of real rights that lead to *Tawteen*. Therefore, one could argue that the acquisition and the transfer of other rights that are neither (a) real rights; nor (b) real rights that lead to *Tawteen* are possible. Examples include mortgages or land servitudes, which can be considered rights that do not come under the 2001 Amendment Law.

### IV. TEST CASE – THE CASE OF MR X<sup>25</sup>

Mr X is a Palestinian refugee in Lebanon. He is the son of a Palestinian father and a Lebanese mother. He wanted to register his share of the property inherited from his deceased Lebanese mother. Mr X is one of six heirs to the property. NRC has not to date nor does it intend to act on behalf of the other five heirs.

It is important to note that the case was tested before the Ministry of Finance and the Sunni Sharia court in Beirut.

The report describes the steps taken by NRC ICLA and the beneficiary Mr X.

#### STEP ONE - POWER OF ATTORNEY

Mr X duly signed the power of attorney at a Notary Public in Beirut which authorised an ICLA consultant lawyer to act on behalf of Mr X.

#### STEP TWO - APPLICATION TO THE MINISTRY OF FINANCE (BEIRUT)

Mr X provided to the lawyer the following documents:

1. Property deed of the apartment;
2. Death certificate of the deceased mother;
3. Copy of the death certificate of the father;
4. Family civil extract for the father of Mr X identifying the deceased family;
5. Family civil extract for the father of Mr X identifying the heirs;
6. Mr X's family civil extract;
7. Certificate from the Mukhtar identifying all heirs.

The ICLA lawyer submitted to the Ministry of Finance - General Financial Department -the declaration of inheritance<sup>26</sup> completed by Mr X which included details of the inheritance of the deceased. This declaration was submitted within the required 90 days from the date of death.<sup>27</sup> In case the heirs (or one of them) do not submit such a declaration, a fine will be determined by the Ministry of Finance to be paid by the heirs. The following required documents were attached to the declaration:

1. Death certificate;
2. Family extract for the deceased;
3. A statement from the Real Estate Registry regarding the property.

The Ministry of Finance provided the ICLA lawyer with an authorisation to be able to submit an application to the Sharia court.

#### STEP THREE - SHARIA COURT

At the Sunni Sharia court, Beirut, the ICLA lawyer presented an application on behalf of Mr X and a decision was issued by the court identifying the legal heirs and ruling on their respective ratios of the inheritance.

#### STEP FOUR - MINISTRY OF FINANCE (BEIRUT)

The ICLA lawyer submitted a set of documents for the purpose of issuing the fees and taxes that are due for the transfer of inheritance to the heirs. The ICLA lawyer presented a copy of the Sharia court decision to the Ministry of Finance, in addition to details about the total area of the apartment and all supporting documentation attesting that no further taxes are payable on the property.

<sup>25</sup> The applicant's real name is withheld.

<sup>26</sup> Article 33 of Decree no 146/1959.

<sup>27</sup> Article 21 of Decree no 146/1959.

#### STEP FIVE - AN ACCREDITED EVALUATOR APPOINTED TO EVALUATE THE PROPERTY

The evaluator, assigned by the Ministry of Finance accompanied by Mr X and the ICLA lawyer, visited the property to evaluate its price in order for the taxes to be calculated accordingly after the deduction of all relevant exemptions.

The accredited evaluator established the estimated value of the property.

#### STEP SIX - MINISTRY OF FINANCE (BEIRUT)

The Ministry of Finance, Beirut, then established the taxes for all heirs. For the taxes to be paid by each one of the heirs, the Ministry of Finance calculated them according to the ratio of shares allocated to each one of them by the Sharia court.

The ICLA lawyer submitted an application to the Ministry of Finance requesting that the tax was to be divided between the heirs, based on the same division of the shares.

The Ministry of Finance accepted the request and the fees for Mr X were determined. Mr X paid his share of the fees and taxes as determined by the Ministry of Finance.

Only Mr X paid the fees and taxes. The other heirs did not. (NRC is not representing the other heirs). Therefore, the Ministry of Finance issued a document called the "Book of Transfer of Shares" with the name of Mr X only and not to the other heirs.

#### STEP SEVEN - NOTARY PUBLIC

Mr X visited the Notary Public who, based on the "Book of Transfer of Shares", the property deed, and the inheritance decision from the Sharia court, prepared the "Contract of Transfer of Shares", which allowed Mr X to request the registration of his shares at the Real Estate Registry.

#### STEP EIGHT - REAL ESTATE REGISTRY

In order to execute the "Contract of Transfer of Shares" at the Real Estate Registry, Beirut, the ICLA lawyer submitted the following required documents and paid the fees:

1. Original property deed;
2. Original "Book of Transfer of Shares";
3. "Contract of Transfer of Shares" (2 copies); and
4. Copy of the family civil extract of the deceased.

The matter was referred to the general manager of the Real Estate Registry to determine whether the "Transfer of Shares" can be registered given that the applicant is a Palestinian national. The decision taken by the general manager was to accept the application and to transfer only the shares of Mr X in his name.

#### STEP NINE - PROPERTY DEED ISSUED

On 13 February 2015, a separate property deed was issued by the Real Estate Registry and received by Mr X with his number of shares and his nationality recorded as Palestinian.

## V. RESULTS AND RECOMMENDATIONS

The results of this case are significant as they challenge the interpretation of the 2001 Amendment Law and enabled the transfer of real rights to a Palestinian national. NRC successfully supported the registration of inherited property in the name of Mr X, a Palestinian refugee. The process took approximately one year to be completed,<sup>28</sup> the result is that it refutes the misconception held by Palestinian refugees that they are unable to inherit property in Lebanon. The case also provides precedent for future cases of similar facts and gives Palestinian refugees hope in relation to inheritance of property. The case is a milestone in Palestinian refugee inheritance cases and opens the way for exploring and enforcing real property rights for Palestinian refugees in Lebanon.

NRC provided the legal service for free, excluding the taxes paid by Mr X. The working hours of the ICLA lawyer were covered by NRC.

NRC recommendations based on the results of the test case are:

#### 1- FURTHER TEST CASES SHOULD BE CONDUCTED IN OTHER COURTS/AREAS

In the test case the applicant, Mr X, was able to successfully register his real rights at the Real Estate Registry of Beirut based on the fact that the property is located in Beirut. The practice might differ from one place to another as well from one department<sup>29</sup> to another. It is not clear in other districts whether the Sharia court or the Real Estate Registry would have the same practice/interpretation of the 2001 Amendment Law. It is recommended that test cases are conducted in all districts.

The test case may be differentiated from cases in other districts. This differentiation is based on the legal classification of the land on whether it is "Molk" as in Beirut and Mount Lebanon or "Amireh". "Molk" are properties which can be fully owned,<sup>30</sup> whereas "Amireh" is a land whose "Rakaba" (property) belongs to the state, but the state can transfer the right to act (the right of "Tassarrof")<sup>31</sup> to somebody else.<sup>32</sup>

Each type of land has specific legal rules that govern the procedure of transferring inheritance. When it is an "Amireh" land then both the Sharia court and the civil court must make decisions in relation to division of shares. Such division of shares of "Amireh" land is ruled by a specific law which has not been yet challenged. It is still not clear whether the civil court would apply this specific law to Palestinian nationals or if civil courts would apply the 2001 Amendment Law with a more restrictive interpretation.

<sup>28</sup> The procedure would not ordinarily take one year, however in this case a number of strikes took place hindering the process.

<sup>29</sup> Ministry of Finance, General Directorate of Finance-Income Department and Transfer of Fees; Real Estate Registry. Each governorate includes one of each of these departments in the centre of the governorate. There are eight governorates in Lebanon.

<sup>30</sup> Article 5 the Real Estate Property Law No. 3339.

<sup>31</sup> Article 14 of the Real Estate Property Law No. 3339 defines "Tassarrof" as "the right to use, enjoy and dispose of a real property within the limits imposed by the provisions of the present decree, and within the limits of the laws, decrees and regulations. This right can be exercised only on the amirieh property."

<sup>32</sup> Article 6 of the Real Estate Property Law No. 3339.

It must be noted that the socio-political context differs in each area and it may affect the practice of some courts. It is therefore recommended that further test cases in both the civil and Sharia court be conducted in the South region of Lebanon as location tends to influence outcome. In addition, it is recommended that test cases are conducted in both the civil and Sharia courts in all districts within Lebanon to clarify the law as well to verify the practice of other real estate registries.

On the other hand, there is a question related to the nationality of the deceased owner of the property. In this test case the deceased was a Lebanese national (who is the mother), and the heir is a Palestinian. In order to confirm that the deceased Palestinian owner of property and the Palestinian heirs can inherit and transfer their inheritance at the real estate registry, it is thus recommended that a case be tested where the deceased owner of property and the heir are both Palestinian.

## **2- TEST CASE OF CHRISTIAN PALESTINIANS**

While the results of the test case are significant, the case may be distinguished from other Palestinian inheritance cases since the process was through the Sharia court and thus only applies to the Sunni Palestinian population. Whilst the majority of Palestinians in Lebanon are Sunni, there remains a Christian minority who still require clarity in relation to their inheritance rights. It is therefore recommended that further research and a subsequent test case be conducted through the civil courts.

## **3- RAISE AWARENESS ABOUT INHERITANCE RIGHTS AMONG PALESTINIAN REFUGEES IN LEBANON**

As mentioned above, there is a misconception amongst Palestinian refugees in Lebanon in relation to their inheritance rights. Palestinian refugees are too afraid and/or unwilling to take legal action and often prefer to utilise informal mechanisms.

It is recommended that Palestinian refugees be informed about their legal rights including through raising awareness sessions, workshops and information brochures.

## **4- SHARE THE RESULTS OF THE TEST CASE WITH OTHER STAKEHOLDERS**

Through this report, NRC is sharing the findings of the test case with other stakeholders, and legal practitioners. It is recommended that the twelve NGOs which form the property campaign for Palestinian refugees in Lebanon (which was launched in 2012) continue to coordinate and share information relating to real property rights of Palestinian refugees.

## **5- ADVOCATE THE REVIEW THE 2001 AMENDMENT LAW**

It is recommended that legislators review the 2001 Amendment Law toward more recognition of Palestinian housing, land and property rights in line with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of Racial Discrimination to clearly stipulate the fate of estates owned by deceased persons that should be inherited by Palestinians.

## **6- FURTHER LEGAL RESEARCH TO BE CONDUCTED TO DEFINE THE TERM "TAWTEEN"**

The participants of the Symposium argued that Palestine was officially recognised as a state by Lebanon in November 2008 and therefore Palestinians should be treated as having the nationality of a recognised state. Given this argument, Palestinians no longer fall within the first constraint of Article 1(2) of the 2001 Amendment Law, however they may fall short of being excluded from the second constraint, being "any person if such acquisition contradicts the provisions of the Constitution relating to the prohibition of permanent settlement [Tawteen]." It is recommended that further legal research be conducted to define the term Tawteen.

The Norwegian Refugee Council (NRC) is an independent, international, humanitarian, non-governmental organisation which provides assistance, and protection and contributes to durable solutions for refugees and internally displaced people worldwide. NRC has been working in Lebanon since 2006 providing humanitarian assistance to communities affected by displacement. In early March 2012, NRC commenced its Information, Counselling and Legal Assistance ICLA (ICLA) programme in Lebanon, with a focus on assisting refugees and displaced persons to understand and enjoy their rights. All NRC services are free of charge.

For further information about NRC Lebanon's ICLA programme or to find out about making legal referrals or receiving NRC training or awareness sessions on legal issues, please contact Julia Herzog-Schmidt, ICLA Specialist at [julia.herzog-schmidt@nrc.no](mailto:julia.herzog-schmidt@nrc.no) or 01 366 113.

## **CONTACT US:**

For legal assistance or more information on NRC's legal activities in Lebanon, Please contact NRC from Monday to Friday, 09:00 to 16:00

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