

Women and Land in the Muslim World

Pathways to increase access to land for the realization of development, peace and human rights



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**WOMEN AND LAND IN THE MUSLIM WORLD:
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FOREWORD



THE SOCIAL AND economic development of every society goes hand in hand with the social and economic development of women and the realization of their human rights. Access to, use of and control over land – and housing - are necessary cornerstones of this positive change; they contribute to peace and stability in conflict-affected contexts and to the overall improvement of women’s conditions.

The challenges in accessing land faced by women in the Muslim world do not substantially differ from those faced by women in other parts of the world. Various factors, including socially prescribed gender roles, unequal power dynamics at household

and community level, discriminatory family practices, unequal access to justice, institutions and land administration processes, traditional norms and local tenure relationships serve as a barrier to women’s tenure rights. However, 20 per cent of the world’s population is Muslim and certain land-related patterns reflecting customary and religious practices emerge as common elements that create context-specific opportunities to meet these challenges.

In this report, Global Land Tool Network partners investigate these common elements, the international legal frameworks, national laws and a wide range of country experiences to promote women’s access to land in the Muslim world. This report provides practical and evidence-based guidance on how to improve women’s access to land in the specific context of the Muslim world.

The emphasis is on analysing the different types of land tenure options available and how to strengthen them in the short-to-medium term, while pursuing longer and more transformative change at the policy, legal, and implementation levels. Special attention is given to the protection of women’s land rights through inheritance – as this constitutes the main avenue through which women in the Muslim world can access land ownership – and at the time of marriage, when the land and property regime of the family is redefined. Legal and administrative reforms, access to

credit and microfinance, and access to justice are presented as important conditions for change. Further, the report dedicates a full section to the protection of displaced women's land and housing rights, which is a pressing priority for governments, humanitarian and development actors alike.

I commend this report to all involved in sustainable and inclusive development and in the promotion of women's land rights in the Muslim world and beyond. Success in ensuring women's access to, use of, and control over land is essential for creating more equitable, productive and peaceful societies, for the benefit of women, men and future generations.

Maimunah Mohd Sharif

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EXECUTIVE SUMMARY

INTRODUCTION AND KEY MESSAGES

Women's access to land is crucial to ensure social and economic development and food security; it contributes to the realization of human rights, empowerment and participation of women; it helps to protect women from violence and health hazards, and it enables them to play a bigger role in the stabilization of societies in crisis and conflict. For women, access to land means security, stability, independence and freedom.

Unfortunately, socially prescribed gender roles, unequal power dynamics at household and community level, discriminatory family practices, unequal access to justice, institutions and land administration processes, traditional norms and local tenure relationships frequently deny women adequate access to land for farming, housing, or other social and economic purposes. Such challenges are faced by women in the Muslim world as well as in other parts of the world. However, 20 per cent of the world's population is Muslim and - despite the significant national differences encountered - certain common land-related patterns reflecting customary and religious practices emerge in the Muslim world as elements that shape the way women can access to, use of and control over land.

This report looks at global normative work, regional frameworks, and good country-level practices, it provides an analysis of the most important aspects to be taken into consideration to successfully secure women's access to land in the Muslim world and makes a set of evidence-based and context specific recommendations for action.



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The report builds on key concepts, tools and approaches developed in the past decade by the Global Land Tool Network, such as the continuum of land rights, the fit-for-purpose land administration, the appreciation of the diversity of women, and the engagement with aspects of Islamic land law for the

protection of the land rights of women and of the most vulnerable.

The ideas and recommendations suggested here are intended to be used by wide range of policymakers, land practitioners, development and humanitarian workers, civil society, religious leaders, women's organizations, communities and donors.

The methodology used for the development of the content and of the recommendations was an interactive process of consultations, research, peer review and action learning involving a wide range of land practitioners from different geographical contexts and professional backgrounds. The key GLTN partners that contributed to this report are UN-Habitat, the University of East London, the Arab Union of Surveyors, the Urban Training and Studies Institute, and the International Islamic University of Malaysia. Other organizations contributed at different steps of the process, including the Norwegian Refugee Council, Habitat International Coalition and other local and regional civil society organizations. Financial contributions from the Netherlands, Sweden and Norway made the development and publication of this report possible.

WHAT PROTECTS WOMEN'S ACCESS TO LAND

International frameworks, national laws, religious and customary laws exist to protect and regulate women's land, housing and property rights. The report outlines the main features of these instruments and gives recommendations on how to ensure that they play their role in protecting and

promoting women's land rights. Gender-responsive constitutions, national policies and state laws - and their enforcement - are the main avenue through which increased access to land for women should be pursued. Alignment of national laws with international human rights instruments is a key priority to ensure the abolishment of gender discrimination.

Of particular relevance are the Islamic land law provisions, which prescribe women's rights as they pertain to owning, inheriting and using land, although these are not homogeneously incorporated in national legislation, not always interpreted or implemented correctly and at times overridden by customary discriminatory practices.

The report outlines how different legal systems can coexist in what is commonly defined as "legal pluralism" and provides recommendations on how to intervene in such contexts. Guidance is provided on the harmonization of the land-related provisions across the different systems and the clear definition of when different sets of laws can be applied.

Other important actions to be taken include the revision, amendment and transformation of the existing laws in a gender-responsive manner; developing the capacities of different actors who have a role in making, modifying or applying the law; the dissemination of information about rights, laws and regulations; and improving access to justice and land administration services for women.

HOW WOMEN CAN ACCESS LAND

There are various ways in which women can access land (individual or joint ownership, tenancy, rights of use, etc.) and each of them offers a different degree of tenure security and entry points for intervention. In line with the continuum of land rights approach, it may be that the best option in one context may not be in another, or that the most secure tenure option does not reach out to a sufficient number of women within a reasonable time frame. Determining the best tenure options to be promoted and developed in a specific context requires careful consideration. All possibilities should be considered with the aid of good information and data on what options are available, what women's needs and aspirations are, and what is the prevailing environment (e.g. women are free from threats of violence, are educated, etc.). Greater attention needs to be given to strengthening women's use rights through a range of case-appropriate interventions, as this is often how women gain access to land and housing in Muslim countries.

INHERITANCE

Research shows that inheritance is the main avenue through which Muslim women acquire independent ownership of land and housing. Inheritance is one of the most regulated fields of law and it is therefore important that adequate awareness of the inheritance provisions and capacity of those involved in regulating the issue are developed. Religious leaders, judges, communities and women themselves need to be adequately sensitized and informed on the matter.

The report also recommends promoting a holistic approach to estate planning and management by families. Complementary mechanisms to increase women's access land and housing are proposed to counterbalance women's lesser inheritance rights; these include the use of wills, gifts, dower, and others. Further, the renunciation of inheritance rights and the practices of excluding female family members from inheriting parts of the deceased's estate should be combated and minimized. Adequately addressing these issues has the potential to really bring about a change in the lives of women in the Muslim world, particularly if combined with awareness and capacity development.

MARRIAGE

Marriage plays an extremely important role in defining women's access to land and it is a key entry point to (re)equilibrate the relationship between the spouses and their access to housing, land and property. The two corner stones of this approach are awareness-raising for the families of the couple and better understanding of the mechanisms to define property regimes for the couple at the time of marriage. Joint marital property is an important and still largely untapped avenue to increase access to land, property and housing for women in the Muslim world. The type of marital contract, the national laws governing marriage, and the level of understanding of the different actors involved in contracting marriages all have an important effect on how women access land, not only when they are married, but when their spouse dies, or they are divorced. The legal system, support groups and organizations, and

governments can do much to improve women's rights to land in this area.

LEGAL AND ADMINISTRATIVE REFORMS AND ACCESS TO CREDIT

Although not specific to Muslim contexts, the report highlights how legal and administrative reforms of the land sector are required. Expensive, bureaucratic and gender blind land administration practices effectively prevent women from using land administration services, hampering their access, use and control over land. Interventions to increase access to credit and microfinance for women are also needed to level the playing field and make women's access to land fair and less difficult. The report provides a set of specific recommendations on this.

FOCUS ON DISPLACED WOMEN

Displaced women need special support because of the extremely challenging conditions under which they live and the many obstacles and dangers they face. Access to land and housing will significantly ease their plight. This can be promoted by holistic approaches that consider the increasingly urban and protracted nature of displacement, balance the needs of the displaced and host communities, and that assess the value of short-term solutions against their sustainability and effectiveness in the medium to long term. Strengthening the tenure options that provide short-term solutions to larger number of women and their families should be privileged and made more effective. Cross-sectoral approaches

must be developed to ensure that land and tenure security interventions are integrated into other pressing priorities at the time of conflict, for which increased coordination among humanitarian and development actors is needed.

SUMMARY OF THE RECOMMENDATIONS

The report ends with a section summarizing the recommendations emerging, including those that are of relevance beyond the Muslim world or are of benefit also to men, their families and the entire communities. The recommended actions are of different scope, scale, depth and envisaged duration, and they can be combined and sequenced differently in different contexts.

TERMINOLOGY

Access to land - The report refers to "access to land" as a short formulation for "access to, use of, and control over land". "Access to land" also entails "access to tenure security" and includes access to housing, as it is linked to the protection of housing, land and property rights.

Muslim world – The report refers to "the Muslim world" to indicate those contexts where the influence of Muslim laws and practices have a significant influence. This includes Muslim majority countries and countries with significant Muslim minorities, but it can also apply to relatively small Muslim communities living in non-Muslim contexts. It also happens that practices of Muslim communities have some influence on non-Muslim communities living in Muslim dominated contexts and therefore the concepts presented in the report could be useful to intervene in such communities as well.

Women living in Muslim contexts – The content of the report is particularly relevant for Muslim women and non-Muslim women married to Muslim men. However, some practices of Muslim communities can influence to varying degrees practices of non-Muslim communities living side by side to them. The content presented in this report should be read in this light.

Islamic land law - Islamic law (sharia) is a man-made code of religious law based on a hierarchy of sources of law, of which the Quran and the Sunna are – in this order – the most important ones. Section 2.4 of the report describes what is Islamic land law in more detail.



INTRODUCTION

ACCESS TO LAND is a key element that allows women and men to fully play their role in building peaceful, stable and prosperous societies and to enjoy the full range of human rights. Indeed, the social and economic development of communities and societies cannot take place in a sustainable manner without the full contribution of women. This report provides practical and evidence-based guidance on how to improve women's access to land in the specific context of the Muslim world.

THE STATUS OF WOMEN'S RIGHTS TO LAND AND TENURE SECURITY IN THE MUSLIM WORLD

The challenges in accessing land faced by women in the Muslim world do not substantially differ from those faced by women in other parts of the world. Socially prescribed gender roles, unequal power dynamics, discriminatory family practices, unequal access to institutions and land administration processes, traditional norms and local tenure relationships frequently deny women the chance to adequately access land. The statistics speak for themselves: women are responsible for the production of 60 to 80 per cent of food in developing countries, yet they rarely own the land they work, they have little tenure security, limited decision-making power and

little control over how to use the land or its outputs. The laws or customary practices of 102 countries still deny women the same rights to access land as men.¹ Gender inequality in relation to land and other productive resources is intimately related to women's poverty and exclusion, a problem certainly not confined to but present in the Muslim world.

While consolidated gender disaggregated data on women's access to land and resources in the Muslim world – and globally- is missing, evidence from case studies indicates that women's ownership of land and overall access to and control over it is very low. In Middle East and North African countries, "unequal inheritance rights are linked to women's poor access to land and property: only 4 per cent of women have land titles".² In South Asia, "women have limited opportunities to access or own land and other productive resources in their own name. Studies suggest that in Afghanistan only 2 per cent of women own land. Positive steps toward gender equality in this area include Pakistan's 2011 Anti-Women Practices Law, which seeks to protect women's right to inherit. Other

¹ *SIGI 2014 Synthesis Report, OECD Development Centre*

² *SIGI 2014*

countries have introduced legislation on land ownership (e.g. Afghanistan), however the prevalence of customary or religious laws continues to undercut these civil law protections".³ In East Asia and the Pacific, "women lack rights to own and control land and non-land assets and to access credit".⁴ These factors negatively affect other important aspects of the overall social development of women, "reduce income-generating opportunity for women, lower decision-making power for women within the household, increase food insecurity for women and their families and make women and their families more vulnerable to poverty".⁵

Despite national legislations and Islamic land law provisions being, at times, relatively progressive about women's rights, in practice, various forms of gender discrimination in some predominantly Muslim contexts can be observed. Even when the legal, religious and institutional provisions protect – at least partially - women's inheritance rights, for instance, their enjoyment by women is often jeopardized in practice.

Twenty per cent of the world's population is Muslim. There is a great range of differences between Muslim-majority countries, and women themselves are not a homogeneous group. It is, however, possible to see common land-related patterns reflecting customary and religious laws and practices in the Muslim world. This constitutes an

important entry point⁶ for gender-responsive and culturally accepted interventions that increase women's access to land.

In this report, Global Land Tool Network partners look at these common elements - along with international legal frameworks, national laws and a wide range of country experiences - to provide practical and evidence-based guidance on how to improve women's access to land in the specific context of the Muslim world.

OBJECTIVE OF THE REPORT

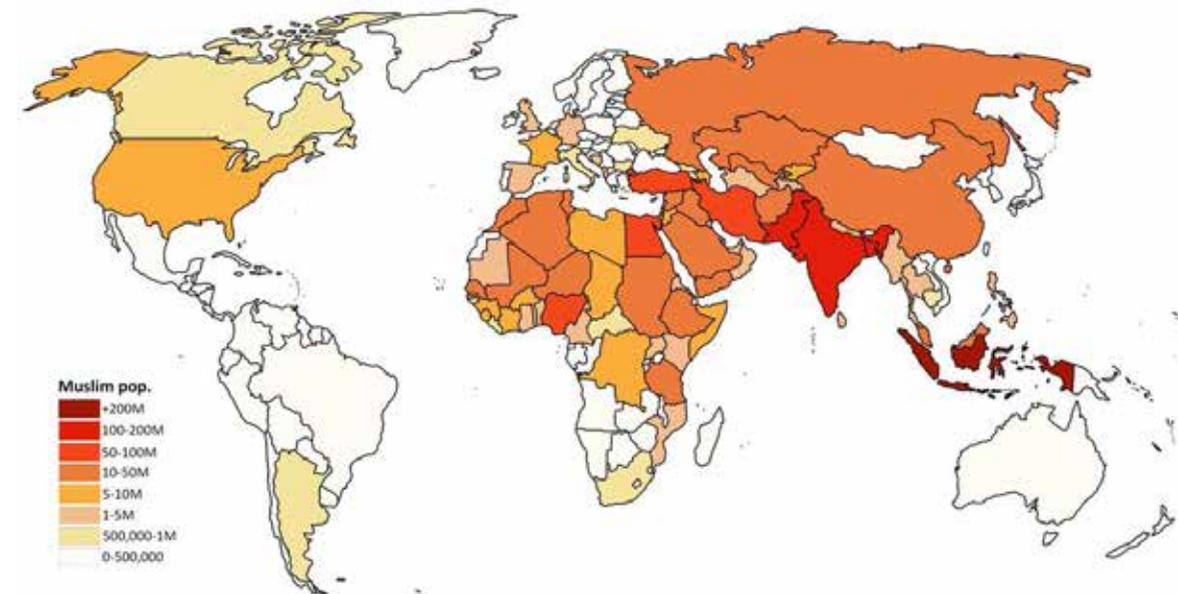
The objective of this report is to provide practical and evidence-based guidance on how to improve women's access to land in the specific context of the Muslim world. The document not only gives information on the key relevant frameworks and ways through which women can access ownership, use and control over land, but it also reflects on successful interventions and key elements of change that, combined, have shown potential for getting positive results. Gender and land tenure are intertwined with social, economic and political power dynamics. For technical interventions to have an impact on women's lives, they need to be explicitly linked to these power dynamics in a way that creates positive change for women. This document looks into these combined aspects.

The report also looks at the different elements influencing women's access to land in the context of legal pluralism,

³ SIGI 2014
⁴ SIGI 2014
⁵ SIGI 2014

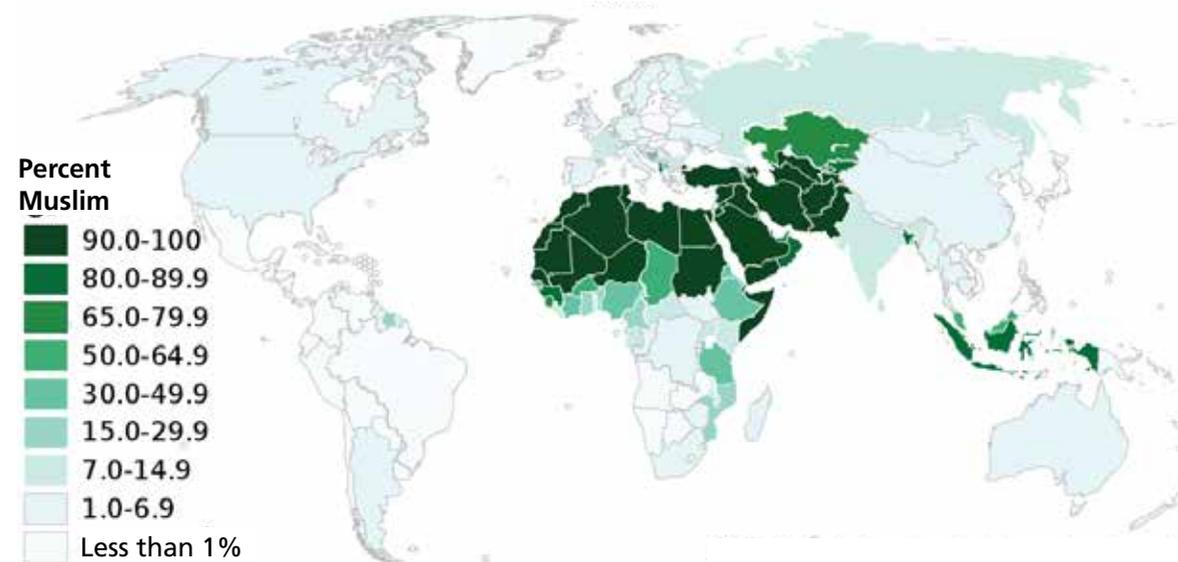
⁶ "Islamic principles and land: opportunities for engagement" (2011), UN-Habitat, University of East London and Global Land Tool Network.

Muslim population in numbers



Source: Pew Research Centre June 2014

Muslim population in percentages



Source: Pew Research Centre June 2014

where international human rights and legal frameworks, national laws, customs and practices are interwoven and can be looked at to promote women's access to land in a pragmatic way, to learn from approaches and experiences that have proved to be effective in making changes for women in the Muslim world.

Conclusions and recommendations are provided to guide the establishment and implementation of sustainable and effective interventions to increase women's access to land; it is an important precondition to the achievement of peace, stability and economic prosperity in the Muslim world.

The Global Land Tool Network envisages that the findings of this work will be used to improve understanding of and to develop capacities on women's access to land and property issues, and to advocate for concrete interventions in favour of women's access to land in the Muslim world. It is also hoped that the narrative around women access to land will be expanded to include the whole range of tenure options that are available to women—beyond land ownership alone—and that this narrative is redefined to promote a positive and pragmatic engagement with Islamic land law principles as an effective way to promote women's access to housing and land in the Muslim world.

Although the focus of the publication is on women's access to land and the content is presented in that light, the tools and approaches proposed benefit both women and men, as they support inclusive and equitable distribution of land resources across different sectors of the society. Contexts where women have access to land and property are also likely to be more

equitable for different categories of men, minorities and vulnerable people.

Further, not all women living in Muslim contexts are Muslim, as communities of different religious backgrounds have been coexisting for centuries in most countries. Some of the arguments and topics presented might be more relevant for Muslim women than for women of other religions living in Muslim contexts, but the publication intends to provide useful information on how to increase access to land of all women living in the Muslim world, regardless of their religion.

TARGET AUDIENCE

This report is intended for a wide range of policymakers, land practitioners, development and humanitarian workers, civil society, women's organizations and donors involved in development and humanitarian work at the family, community, national and international levels. While specific sections can be used directly by local women's associations, traditional and religious leaders, it is envisaged that the report's contents be adapted to specific contexts to support interventions at the national and local level.

CONCEPTUAL FRAMEWORKS

This publication builds on knowledge and expertise developed by different Global Land Tool Network partners in the past decade. The conceptual frameworks and best practices elaborated here constitute the knowledge base for the development of this publication and form part of the

recommendations for the implementation of interventions to improve access to land for women in the Muslim world.

Islamic land principles

The body of knowledge developed at the University of East London and UN-Habitat is one of this report's most important sources for the identification of Islamic land principles and offers avenues for enhancing land and property rights for women and vulnerable people's categories. Sait and Lim's *Land Law and Islam: Property and Human Rights in the Muslim World* is the main reference together with *Islamic Land, Property and Housing Rights in the Muslim World* training manual and *Islamic Principles and Land: Opportunities for Engagement*.

The continuum of land rights

The continuum of land rights is the cornerstone of the Global Land Tool Network's conceptual framework philosophy and approach, and underpins this publication. It is an inclusive concept that recognizes the existence and validity of a range of types of land rights (rights of use, occupancy, lease, ownership), qualities of rights (formal, informal, customary, short or long duration) and rights holders (individuals, groups, tribes, communities). It advocates for the progressive strengthening of the range of appropriate, legitimate land tenure arrangements in each specific context as being the most effective, scalable and time efficient way to improve access to land for all.

Land tenure is frequently described in opposing terms: formal/informal, legal/not legal, secure/insecure, *de facto/de jure*. In practice, however, a broad and

complex spectrum of tenure arrangements exists between these extremities, lying along a "continuum". The rights along the continuum may be documented and undocumented, formal and informal, for individuals and groups, including pastoralists and residents of slums and other settlements, they may be legal or not legal, and they may overlap. Registered individual ownership is seen as one of the appropriate and legitimate forms, each of which has its advantages and disadvantages. The most appropriate form/s depends on the context, on what best suits the social, cultural and economic needs of local communities and the needs of responsible land administration authorities at a particular time.

The continuum of land rights concepts provides for the recognition of, and increase in, tenure security across the spectrum of land rights, with the opportunity for movement and progressive strengthening of these numerous tenure forms. The concept has been widely embraced by global, regional and national institutions and organizations, even if, at times, it is described with different wording.⁷ Key resources on the continuum of land rights

⁷ *The continuum of land rights was embraced in 2011 by the UN-Habitat Governing Council with Resolution GC23-17. It is reflected in the Framework and Guidelines on Land Policy in Africa that supports the Declaration on Land Issues and Challenges in Africa, signed by all heads of African states in 2009. The report of the Special Rapporteur on the Right to Adequate Housing to the Human Rights Council in December 2013 (AIHR/C/22/46) builds on it. The continuum also features in the New Urban Agenda, which was adopted by the United Nations General Assembly in 2016 and forms the basis of the Sustainable Development Goals' land tenure security target that measures both administrative and perception data with Indicator 1.4.2.*

have been developed by the Global Land Tool Network.⁸

The continuum approach is extremely important in the Muslim world because a wide range of tenure types is common practice. Further, this conceptual framework supports a deeper understanding of Muslim women's land rights, because such rights are often strongly nested in family rights.

Fit for purpose land administration

The fit-for-purpose land administration approach has emerged in recent years as a game changer in the provision of quick, affordable and practical land administration solutions, especially for developing countries. *Fit-for-Purpose Land Administration* (World Bank and the International Federation of Surveyors, 2014) and *Fit-for-Purpose Land Administration: Guiding Principles for Country Implementation* (UN-Habitat, GLTN, Dutch Kadaster International, 2016) are the two guiding documents.

Currently, three quarters of the world's population – the poor and the most vulnerable in particular – and the overwhelming majority of women⁹ do not have access to formal systems to register and safeguard their land rights. National and

regional land organizations have therefore refocused their discussion on designing land administration systems that allow this issue to be addressed by managing current land issues within a specific country or region in a relatively short time and for relatively low and affordable cost in a participatory and inclusive way.

The key characteristics of the fit-for-purpose land administration approach are to be flexible, focused on people's needs (e.g. provide tenure security and control of land use), participatory in capturing and using data with community support, affordable for the government to establish and operate and for society to use, reliable, attainable in a short time and within available human and financial resources, and incrementally upgradeable.

The fit-for-purpose approach proposes the use of general boundaries (rather than more precise fixed boundaries), the use of aerial imageries or high-resolution satellite imagery rather than field surveys, and the use of a variety of accuracies depending on the purpose rather than on technical standards.

The Global Land Tool Network believes that, by embracing and implementing fit-for-purpose land administration approaches, governments and land professionals will successfully remove many of the barriers that prevent women, people living in poverty and minorities from accessing land. Such interventions can take many forms, such as improving and reducing the costs of land registration practices, simplifying land transactions, and using information and data developed by communities rather than

relying on spatial information produced by land professionals, etc.

The diversity of women

Women are not a homogeneous group; they have different needs, experiences and aspirations, and they live in very diverse social, political, economic and cultural contexts which affect their relationship to land and tenure. Some of these differences are recognized more than others (women living in rural or urban settings, different marital status, displaced women) and the literature on this presents a rich bouquet of land and property challenges encountered across the diverse worlds of women and their tenure. However, policy and programming recommendations are often still based on the homogeneous gender dichotomy (women-men) that do not offer an adequate level of understanding to constitute a solid base for change. Instead of addressing women as a homogenous group, it is important to look at the intersection of different identities and how these influence women's access to land in different contexts.

Relevant literature by the Office of the United Nations High Commissioner for Human Rights (OHCHR), UN-Women,¹⁰ the Food and Agriculture Organization exists.¹¹ GLTN, UN-Habitat and UN-Women are to issue a policy paper called *Pathways to*

*Equal and Secure Land Tenure for Women*¹² that further addresses the complexity of this diversity and how to take better account of it to bring about change in the lives of women. This publication unpacks the complexity of women's worlds, but more care and attention to this will be needed when adapting and applying these guidelines to specific contexts.

METHODOLOGY

This report was developed by GLTN partners through an interactive process of consultations, research, peer review and action learning. A wide range of land practitioners from different geographical contexts and professional backgrounds was involved, including academics, civil society representatives, architects, urban planners, lawyers, government representatives, notaries, judges and other professionals. Building on the work previously done by GLTN on the combined use of Islamic land principles and international frameworks to strengthen access to land for all, GLTN partners identified the need to focus further on gender issues and to develop a way to put this knowledge into practice to tackle an issue of priority: increasing women's access to land in the Muslim world.

At an event in Cairo in May 2013, participants reflected on how to practically improve the position of women with regard to accessing housing, land and property rights. A smaller group of practitioners with

8 Resources on the continuum of land rights: (1) *Handling Land: Innovative tools for land governance and secure tenure*, UN-Habitat, GLTN, IIRR 2012. (2) *Property Theory, Metaphors and the Continuum of Land Rights* (2015), UN-Habitat and GLTN. (3) *Framework for Evaluating Continuum of Land Rights Scenarios*, UN-Habitat / GLTN (2016).

9 GLTN estimates that only about 2 per cent of the world's women own land in a formal system. The International Centre for Research on Women (ICRW) estimates that only 1 per cent of the world's women own land.

10 "Realizing Women's Rights to Land and Other Productive Resources" (2013). United Nations OHCHR and UN-Women.

11 "Governing Land for Women and Men: A technical guide to support the achievement of responsible gender-equitable governance of land tenure" (2013). Rome: Food and Agriculture Organization.

12 "Pathways to Equal and Secure Land Tenure for Women: Addressing diversity – scaling progress" (forthcoming). Global Land Tool Network, UN-Habitat and UN-Women.

experience in this field was identified to take the work forward and develop a set of guidelines that would build on practical experience and evidence on the ground. The nature of the topic called for an innovative approach: the use of action learning¹³ that allows the group to reflect on knowledge and experiences in a different way, rather than approaching the topic from a purely academic or developmental point of view.

The small group of people worked collectively to draft these guidelines. They gathered virtually for a number of months to develop the document through peer review, presentation and facilitated action learning sessions. The work-in-progress was presented and refined several times, enriching it with inputs and validation¹⁴ and was also improved by a desk review of important publications on related topics produced by GLTN partners that are consistently referred to in this report and are listed in the references.

¹³ "Action learning is a rigorous process of exploring a topic with a small group of peers and a facilitator. The presenter describes the challenge or identifies a question they wish to work on and the group asks questions to explore and probe. The presenter eventually moves to identify action steps and receives feedback from their peers," says Ruth Cook, Director of Action Learning Associates. See www.actionlearningassociates.co.uk.

¹⁴ A practitioners' group meeting was held in Jordan in October 2014; a paper was presented at the 2015 World Bank Land and Poverty Conference; the work was also presented at the Surveying and Development Conference in October 2015 in Egypt.

The Global Land Tool Network

Secure land tenure and property rights are fundamental for people to get access to adequate housing, food security and livelihoods. Land tenure security is indispensable for the realization of human rights, poverty reduction for achieving economic prosperity, and sustainable development leading to attainment of the Sustainable Development Goals.

The Global Land Tool Network⁰¹ (GLTN) is a coalition of international partners contributing to increased access to land and tenure security for all. GLTN partners are organizations drawn from the rural and urban civil society, international research and training institutions, bilateral and multilateral organizations, and international professional bodies.

GLTN develops, disseminates and implements pro-poor and gender-responsive land tools. These tools and approaches contribute to land reform, good land governance, inclusive land administration, sustainable land management and functional land sector coordination.

The core values of GLTN are: pro-poor, equitable, gender-responsive, affordable, sustainable and systematically large scale and scalable. The key elements of the GLTN philosophy are: land tools as an entry point in the land sector; partnership and collaboration; the continuum of land rights approach; and the fit-for-purpose land administration. The areas of GLTN's work are: development of land tools, advocacy and knowledge management, capacity development and implementation of land tools at regional and country level.



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⁰¹ More information on the Global Land Tool Network can be found at www.gltm.net



1

WHY WOMEN NEED LAND: DEVELOPING THE ADVOCACY ARGUMENTS

THIS MODULE SUMMARIZES some of the most compelling arguments around which national and local narratives should be developed to advocate for women's access to land. Advocacy emerged from consultations and the literature review as one very important element needed at national and local levels to bring positive change in the lives of women and their communities. The content of this module largely applies to women living both in Muslim and non-Muslim contexts.

KEY MESSAGE 1: WOMEN'S ACCESS TO LAND ENSURES SOCIAL AND ECONOMIC DEVELOPMENT AND FOOD SECURITY

Social and economic development of communities and societies cannot be sustainable without the full contribution of women. Access to land¹⁵ enables women to fully play their role and better contribute to the social and economic development of their communities and societies.

Numerous studies have shown that secure rights to land and property for women can

¹⁵ Land includes housing, spaces to be used for productive activities and income generation, agricultural land, wetland, pasture, rangeland, forests, etc.

lead to increased agricultural productivity and production,¹⁶ making this a foundation stone of the fight to ending poverty. Women are responsible for the production of 60 to 80 per cent of food in developing countries,¹⁷ yet they rarely own the land they work, they have little tenure security, limited decision-making power and little control over how to use the land or its outputs. In Bangladesh, for instance, women constitute 68 per cent of agricultural labour force but only 5 per cent of those have decision making and management control over agricultural land holdings. In Mali, these figures are respectively 68 and 3 per cent.¹⁸ Such restricted decision-making power for the majority of the agricultural labour force leads to low investment and productivity loss, which negatively affects families and children.

Women's access to and control over productive resources, including land, and independent income have been shown to

¹⁶ Gomez, M. and H. Tran (2012). "Women's Land and Property Rights and the Post-2015 Development Agenda". *Global Thematic Consultation on "Addressing Inequalities: The Heart of the post-2015 development agenda and the future we want for all."*

¹⁷ "Women's Access to Land – Principles for Equitable Gender Inclusion in Land Administration". FIG No. 24.

¹⁸ "Gender and Land Statistics: Recent developments in FAO's gender and land rights database". Rome: Food and Agriculture Organization.

strengthen women's autonomy and bring about long-term benefits for society, such as higher investment in children's education, health and nutrition, the reduction of fertility rates, and an increase in the well-being of future generations.¹⁹ Access to land and tenure security is recognized as an asset for both men and women and provides old-age support and status.

KEY MESSAGE 2: WOMEN'S ACCESS TO LAND CONTRIBUTES TO THE REALIZATION OF HUMAN RIGHTS

The positive correlation between ensuring women's rights to land and other productive resources and improved household welfare has repercussions for the enhanced enjoyment of a broad range of rights for women. Tenure security – including protection from forced eviction – is fundamental to the realization of the right to an adequate standard of living and the right to adequate housing, and it is directly linked to dignity. Tenure security is a fundamental right of every individual but its realization and protection are particularly important for the most vulnerable, the poor, Indigenous People and local communities for whom access to land is often the only form of security. This is often also the case for women; access to land allows them to provide for their day-to-day needs and those of their families, and to weather some of life's most difficult challenges. Regardless of whether a woman lives in a rural or urban setting, land rights also have

19 Deininger, K., A. Goyal and H. Nagarajan (2010). *Inheritance Law Reform and Women's Access to Capital: Evidence from India's Hindu Succession Act*.

major implications for the achievement and enjoyment of other human rights, such as the right to equality, food, health, work and education.

KEY MESSAGE 3: WOMEN'S ACCESS TO LAND CONTRIBUTES TO THEIR EMPOWERMENT AND PARTICIPATION

Access to land is important for women's empowerment, rebalancing power within the family and society and increasing civic engagement and public participation. Women's poverty is directly related to the absence of economic opportunities, lack of access to economic resources, including land ownership and inheritance, a lack of access to education, credit and support services and their minimal participation in decision-making processes. A diminished threat of forced eviction and secure land rights boost women's sense of confidence and security, increasing their bargaining power in the home and outside.

Women's access to land and housing is also a critical factor in defining social security, status and identity, elements that are directly linked to participation in local decision-making processes and political power. "Land also has great cultural, religious and legal significance. There is a strong correlation in many societies between decision-making powers and the quantity and quality of land rights one holds. In rural areas, social inclusion or exclusion often depend solely on the individual's landholding status. Even in urban areas, the right to participate in municipal planning, in community decisions and sometimes elections can depend on the

status of an individual as a resident or home owner."²⁰

The introduction of gender quotas for participation in land-related decision-making processes is a valid option. Critics of this approach claim it leads to nominal representation and not to meaningful contributions from women in decision making processes. However, empowerment is a slow, incremental process and gender quotas allow women to gradually become more assertive and knowledgeable, with valuable inputs to decision-making.

Access to land includes the access to public spaces and the ability of women and girls to participate in public and social life. Women's freedom of access to public spaces is still restricted in some countries, although these restrictions are gradually being contested or removed.

KEY MESSAGE 4: WOMEN'S ACCESS TO LAND CAN PROTECT THEM FROM VIOLENCE AND HEALTH HAZARDS

The relationship between women's housing, land and property rights and gender-based violence is multifaceted. Evidence shows that women's ownership of property is associated with lower levels of both physical and psychological domestic violence.²¹ Women who own land and housing are more capable of leaving violent relationships and have the financial security necessary

to provide for themselves and their dependents. Access to tenure security and productive resources is also an important factor in reducing women's vulnerability to violence and HIV, as this access puts women in a better position to step away from violent relationships and avoid engaging in sexually risky behaviour.²² Tenure security also empowers women to cope with the social and economic impact of the HIV epidemic at the household level.²³

On the other hand, claiming rights to land and property from male family members can expose women to psychological and physical violence, death in extreme cases, and can lead to ostracism and abandonment by their families. This is one reason why women, especially in conservative societies characterized by weak rule of law, are reluctant to demand the enforcement of their rights or opt for mediated solutions in which they renounce some of their rights in exchange for a peaceful process and maintaining family harmony.²⁴ Issues of human behaviour should be understood and not underestimated or dismissed as "irrational". Some categories or sections of the society perceive some behaviours as more remunerative than others in terms of social acceptance and social gains. Although development actors might find it difficult to measure and factor into their developmental equations such

22 "Tools for Change: Applying the United Nations standards to secure women's housing land and property rights in the context of HIV". (2012). Centre on Housing Rights and Evictions (2012).

23 "Voices and Visions: The Asia-Pacific Court of Women on HIV, Inheritance and Property Rights". (2008). United Nations Development Programme.

24 "Strengthening Displaced Women's Housing, Land and Property Rights in Afghanistan" (2014). NRC.

20 *Women's Access to Land – Principles for Equitable Gender Inclusion in Land Administration*. FIG No. 24.

21 Pradeep Panda and Bina Agarwal (2005). "Marital Violence, Human Development and Women's Property Status in India". In *World Development*, vol. 33, No 5.

considerations, it is important to note that some of these values are worth respecting, although they may not necessarily favour women.²⁵ However, where gross violations of women's rights are experienced, there is the need to be aware of these shortcomings and address the problem. To mitigate such risks, a combination of measures needs to be put in place to support women on different issues (psychological and social support, alternative and safe accommodation, economic independency, etc.).

KEY MESSAGE 5: ACCESS TO LAND ENABLES WOMEN TO PLAY A BIGGER ROLE IN THE STABILIZATION OF SOCIETIES IN CRISIS AND CONFLICT

Women's critical role in peacebuilding is highlighted by the United Nations Secretary General's report on *Women's Participation in Peacebuilding*²⁶, which draws attention to women's contributions to ensuring family and community food security and the relationship between food insecurity and conflict. Women's participation in post-conflict mediation structures, land management bodies and natural resources management are considered to be extremely important in societies emerging from crisis or conflict.²⁷ Equally, United Nations Security Council Resolution 1325

reaffirms the important role of women in the prevention and resolution of conflicts, peace negotiations, peace-building, peacekeeping, humanitarian response and post-conflict reconstruction. The resolution calls on all parties in conflict to take special measures – including access to land and housing - to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, in situations of armed conflict. Further, United Nations Security Council Resolution 1889 calls for the further strengthening of women's participation in peace processes.

Women's access to land has also proved to lead to more resilience in societies in crisis or conflict, as this enables them to mitigate the negative economic and social consequences and better play their role as breadwinners, heads of households and caregivers to those in need. At the same time, access to land and housing provides significant support to displaced women, as it guarantees the economic independence that is needed in conflict-affected contexts where the safety net of family support is missing and social isolation that can prove very challenging for women.²⁸

Further, there is increased realization that denying large segments of society from equitable access to land imposes high unanticipated costs, as it can be a major contributing factor to extreme poverty, aid dependence, social instability, conflicts and civil unrest, and migration. A more equitable access to land and tenure security for all, including women and youth, is therefore a

cornerstone for building a more inclusive, equitable and peaceful society.

Lastly, it is increasingly recognized that housing, land and property rights violations are used as an instrument of war, for ethnic cleansing, changing the demography of conflict-affected areas and as a way of securing resources and support from militia fighters. Emerging evidence from ongoing conflicts in Iraq and Libya supports this²⁹ and makes clear how protecting the land rights of women and men in conflict-affected contexts is crucial for peace building and stabilization.

KEY MESSAGE 6: ACCESS TO LAND MEANS SECURITY, STABILITY, INDEPENDENCE AND FREEDOM FOR WOMEN

While the key messages highlighted above are drawn from the different literature reviewed, the numerous consultations undertaken during the preparation of these guidelines pointed very strongly at a few key elements that women associate with access to land. These are: security, stability, independence and freedom. In this light, access to land represents an important aspect of a woman's livelihood, dignity and safety, regardless of her ethnicity, religion, marital status, age and income.

RECOMMENDATIONS

It is important to raise awareness nationally and internationally on the importance of increasing women's access to land for the realization of the broader social and economic development of the society, the realization of human rights, increased women's empowerment and participation, protection from gender-based violence and health hazards, and to stabilize societies affected by conflicts. To support advocacy, education and information efforts, evidence of the benefits of women's access to land needs to be generated through targeted research, and gender disaggregated data collection.

²⁵ "World Development Report 2015: Mind, society and behaviour" (2015). Washington D.C.: World Bank.

²⁶ Report of the Secretary-General on Women's Participation in Peacebuilding (A/65/354-S/2010/466), 2010 www.un.org/ga/search/view_doc.asp?symbol=A/65/354 accessed in January 2018

²⁷ "Natural Resource Management in Transition Settings" (2013). UNDG ECHA Guidance Note.

²⁸ "Strengthening Displaced Women's Housing, Land and Property Rights in Afghanistan" (2014). NRC.

²⁹ "Challenges of Land and Property Rights in Conflict and Post-Conflict Setting" (2016). Presentation by Mohamed Ibrahim at a workshop on Land Governance in the Arab States.



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2

WHAT PROTECTS WOMEN'S ACCESS TO LAND: BUILDING ON THE EXISTING REFERENCE FRAMEWORKS

THIS MODULE LOOKS at how access to land, housing and property rights of women are protected and regulated by international and regional frameworks and national, Islamic and customary laws. A better understanding of such provisions, how they relate to each other and how to work with them in the prevailing context of legal pluralism is an important basis for engaging in increasing access to land for women in the Muslim world.

Although significant national variations exist, most Muslim-majority countries have ratified international treaties and frameworks that protect women's housing, land and property rights, even if this is with reservations about certain articles related to gender equality. National legislation equally generally protects access to land for women, although full equality is not always guaranteed, particularly in some areas of land-related family law. Islamic land law and customary laws also provide important entry points and opportunities for protecting and promoting women's access to land.

In spite of this, in most Muslim majority countries, practices are lagging behind, severely discriminating against women. Lack of awareness and understanding of the different legal frameworks at play and gaps, overlaps and contradictions among the different laws contribute to the creation of

the gap between laws and implementation, a gap that this module aims to fill.

2.1 INTERNATIONAL LAW AND OTHER INSTRUMENTS

International law and frameworks are key global cornerstones in the protection of women's land rights across geographical regions and cultural and religious differences. Women's access to land is solidly linked to broader issues of women's and human rights, whose legitimacy is well recognized globally, including in the Muslim world. International human rights instruments can be classified into two categories: declarations, adopted by bodies such as the United Nations General Assembly, which are not legally binding although they may be politically so as soft law, and conventions, which are legally binding instruments concluded under international law.

Declarations and frameworks

The Universal Declaration of Human Rights, adopted by the United Nations in 1948, asserts 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." The

specific rights articulated in the declaration that relate to land and property include the rights to equality before the law and to equal protection, the right to own property and the right to adequate housing.

A number of human rights instruments also deal specifically with women's rights, including their rights to property and inheritance. The **Declaration on the Elimination of Discrimination against Women**, adopted by the United Nations General Assembly in 1967, states that: "All appropriate measures, particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law, and in particular the right to acquire, administer, enjoy, dispose of and inherit property, including property acquired during marriage." This declaration opened the door for the Convention on the Elimination of All Forms of Discrimination Against Women, illustrated in the section below.

There are other recent, non-binding international frameworks that stress the importance of access to land for all and for women. The key ones are the **Voluntary Guidelines on the Responsible Governance of Tenure of Lands, Fisheries and Forest in the Context of National Food Security**, the Sustainable Development Goals, and the New Urban Agenda. Although not internationally binding, the importance of the Voluntary Guidelines³⁰ is in the fact that

³⁰ *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, Food and Agriculture Organization of the United Nations and Committee on World Food Security, Rome, 2012

they were negotiated internationally and finally approved in 2012. They are the first international guidance on land governance and strongly reassert the responsibility of states to "ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status". Further, the Voluntary Guidelines say that "states should consider the particular obstacles faced by women and girls with regard to tenure and associated tenure rights, and take measures to ensure that legal and policy frameworks provide adequate protection for women, and that laws that recognize women's tenure rights are implemented and enforced. (...) states should develop relevant policies, laws and procedures through participatory processes involving all affected parties, ensuring that both men and women are included from the outset".

The Sustainable Development Goals, contained in paragraph 54 of the United Nations Resolution A/RES/70/1 of 2015, also reflect the growing international acceptance of the centrality of secure access to land by all people and the need for gender equality in tenure. Women's secure access to, control and ownership of productive resources – land in particular – features prominently in four goals: Goal 1 - to end poverty;³¹ Goal 2 – to achieve food security; Goal 5 - gender equality and empower

³¹ *Target 1.4: By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance.*

ment of women;³² and Goal 11 – make cities and regions inclusive, safe, resilient and sustainable.

The **New Urban Agenda** was adopted by the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) in October 2016 and endorsed at the 71st session of the General Assembly in early 2017. The agenda envisages cities and human settlements that "fulfil their social function, including the social and ecological function of land, with a view to progressively achieving the full realization of the right to adequate housing as a component of the right to an adequate standard of living, without discrimination". In Article 35, states commit "to promoting (...) increased security of tenure for all, recognizing the plurality of tenure types, and to developing fit-for-purpose and age-, gender- and environment-responsive solutions within the continuum of land and property rights, with particular attention to security of land tenure for women as key to their empowerment, including through effective administrative systems". Further, Article 107 states that governments will "encourage the development of policies, tools, mechanisms and financing models that promote access to a wide range of affordable, sustainable housing options, including rental and other tenure options, as well as cooperative solutions such as co-housing, community land trusts and other forms of collective tenure that would address the evolving needs of people and communities. This is to improve the supply of

³² *Target 5.a: Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.*

housing (especially for low-income groups), prevent segregation and arbitrary forced evictions and displacements and provide dignified and adequate reallocation. This will include support to incremental housing and self-build schemes, with special attention to programmes for upgrading slums and informal settlements", fully in line with the conceptual frameworks identified at the beginning of this publication.

Guidance on the housing, land and property (HLP) rights of women living in conflict-affected context, guidance can be found in the **Principles on Housing and Property Restitution for Refugees and Displaced Persons** (also known as the Pinheiro Principles) by the United Nations Sub-Commission on Human Rights (2005). The Pinheiro Principles assert the right to restitution of housing, land and property for men and women as a legal remedy to displacement and a precondition for durable solutions, including the return to the original home. Although they constitute an important basis for the protection of HLP rights, the principles often resulted in the unintentional distortion towards the promotion of return as the sole option to address the needs of displaced populations, while other important and complementary approaches have been often overlooked. Nevertheless, this framework remains a cornerstone for protecting displaced women's access to land.

International treaties

Access to land and property for women is protected in international law by two combined streams of legislation: the one protecting the rights to adequate housing and protection from eviction, and the one recognizing men's and women's equal

rights. International law supports gender equality and has upheld women's rights to land and property since the 1940s; a number of legal instruments assert these rights.³³ The majority of Muslim countries have signed and ratified these treaties and therefore have obligations to respect human rights and housing, land and property rights. Some countries requested reservations or opt-out clauses regarding some aspects of women's rights that, although at times not directly related to land, have a negative impact on how women access land, housing and property. However, the overall relevance of these treaties is unquestionable, and it is important to build on the most relevant ones when protecting and promoting women's access to land in Muslim contexts. The most relevant ones are below.

The International Covenant on Civil and Political Rights (ICCPR) and **the International Covenant on Economic, Social and Cultural Rights (ICESCR)**, adopted in 1966, elaborate and codify the rights articulated in the Universal Declaration of Human Rights. They explicitly recognize the right to equality between women and men and the right to non-discrimination, which have direct implications for women's access to property, inheritance and state allocations of land and property. General Comment No. 28 of the United Nations Human Rights Committee on Article 3 of the ICCPR adopted in 2000, explicitly requires that: "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."

The **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** of 1979 calls for equal rights in owning and administering property without discrimination and "equal treatment in land and agrarian reform". It also forbids discrimination against women in their enjoyment of "adequate living conditions, particularly in relation to housing". CEDAW's approach to women's access to property is wide-ranging and includes non-discrimination, women's equal rights to credit, and access to property for rural women. CEDAW provides that within the family both spouses have equal rights in the "ownership, acquisition, management, administration, enjoyment and disposition of property". It is to be noted that several Muslim majority countries have reservations about the CEDAW, particularly on its inheritance provisions, although some states have reviewed their position on this in recent years.

These efforts set a standard and emerge from other sources, such as the United Nations General Assembly Resolution on improvement of the situation of women living in rural areas,³⁴ the United Nations Commission on Human Rights³⁵ and the

³⁴ Resolutions 48/109 (1994), 50/165 (1996), 52/93 (1998).

³⁵ Resolutions 2000/13, 2001/34, 2002/49 and 2003/22 on Women's Equal Ownership of, Access to and Control Over Land and the Equal Rights to Own Property and to Adequate Housing.

United Nations Sub-Commission on the Promotion and Protection of Human Rights.³⁶

Other international instruments guaranteeing land and other productive resources related rights are: the **International Convention on the Elimination of All Forms of Racial Discrimination**, the **International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families**, the **Convention on the Rights of Persons with Disabilities**, and the **Convention on the Rights of the Child**.

Building on the United Nations Declaration on the Rights of Indigenous People that "provides that Indigenous Peoples have the rights to the land, territories and resources which they have traditionally owned, occupied or otherwise used or acquired and that states shall give legal recognition and protection to these lands, territories and resources (...) [and] that indigenous women shall be protected from discrimination and that particular attention shall be paid to their rights and special needs", the **Convention concerning Indigenous and Tribal Peoples in Independent Countries of the International Labour Organization (ILO)** protects the rights of ownership over traditionally occupied land and the "right to give or withhold consent to any proposed projects that may affect the lands they customarily use, own or occupy".

The rights of women and men living as refugees are protected by the 1951

³⁶ Resolutions 1997/19 and 1998/15 on Women and the Right to Land, Property and Adequate Housing.

Convention Relating to the Status of Refugees (the Refugee Convention), which imposes obligations on host states to guarantee a range of rights relating to immovable property on at least the same terms as other non-citizens in a host state.

Implementation and monitoring mechanisms

The importance of international law and frameworks is unquestionable. However, it is repeatedly stated how the weakness of instruments to monitor countries' implementation of international treaties has significantly reduced their effectiveness and the struggle to feel the positive impact of such instruments is apparent at country level. On the other hand, it is important to note that a range of implementation mechanisms are also available. The detailed description of such mechanisms is beyond the scope of this work, but it is important to list the key ones as they can be relevant in advancing women's land rights at country level.

The **United Nations treaty monitoring bodies** are an important mechanism; committees composed by independent experts of recognized experience in the field of human rights elected by the states were established to monitor the implementation of some of the mentioned conventions, such as the United Nations Human Rights Committee, the United Nations Committee on the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Elimination of All Forms of Racial Discrimination (CERD), the United Nations Committee on the Rights of the Child (CRC), the United Nations Committee on the Elimination of Discrimination of All

Forms of Discrimination against Women (CEDAW) and others.

Among the charter-based bodies there are the **Human Rights Council**, the **Human Rights Council Complaint Procedure**, and the **Special Procedures of the Human Rights Council**, such as the special rapporteurs (e.g. the Special Rapporteurs on the Right to Adequate Housing, on Internally Displaced People, etc.), independent experts and working groups. The functions of Special Procedures are urgent appeals, country visits, annual reports to the United Nations General Assembly and Human Rights Council, etc. **The Universal Periodic Review**, established in 2005, is also an important mechanism that complements the United Nations treaty monitoring bodies in periodically examining the human rights performance of the 193 United Nations Member States.³⁷

United Nations Resolutions and United Nations agencies – with their mandates and programmes – also have an important role in implementing international law and frameworks. Particularly important is the **Office of the High Commissioner for Human Rights**, tasked to promote and protect the enjoyment of human rights, promote and coordinate action on human rights within the United Nations system at the international level, and provide assistance – including financial and technical – in the field of human rights at the request of a state at country level.

Making the most of international frameworks

Muslim-majority countries are increasingly ratifying international human rights treaties and acknowledging their legal obligations to respect the Universal Declaration of Human Rights, including women rights and land rights specifically. Most national constitutions and laws formally incorporate human rights and international standards and, while some countries still have reservations about some treaties' articles, others are progressively lifting them. Concerted efforts are needed from all sides to ensure that existing international frameworks deliver on their intentions to the people on the ground. In spite of their weaknesses, such frameworks have an important role in providing the overall inspiration and guidance for national-level reforms in the constitutions, policies and laws. Human rights advocates and gender equality supporters are able to build their arguments and define their actions on such bases that provide an important element of political dialogue at national level - the most important level at which the adoption of such global normative thinking is needed. Further, global frameworks have been inspired by and have inspired regional and national treaties and laws, some of which are presented below. This constant dialogue and organic interaction is important to ensure that global frameworks are domesticated and adapted to the regional and country level, where they have more relevance.



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2.2 REGIONAL FRAMEWORKS

Access to land is also regulated by a number of regional treaties and this report gives an overview of regional legal frameworks that protect women's access to land. The non-exhaustive lists of regions focus on Africa, Asia, Arab States and Europe, as these regions host large Muslim communities; similar frameworks are also in place for other regions.

Africa

The influence of Islam and of the provisions that are specific to land in Islamic law in Africa is a well-documented phenomenon that has influenced the African continent for centuries. Muslims account for 45 per cent of the African population³⁸ and it is estimated

that there will be over 385 million Muslims in Africa by 2030.³⁹ Muslim communities are found in all African countries and the continent is influenced to various degrees by Islamic land principles and their day-to-day application, from the permeation of the regulatory policy frameworks to the adoption of Islamic norms in community practices.⁴⁰ African countries at the super national level regulate their access to land for women by adhering to international treaties and protocols on access to land and women's equality. However, Africa has also developed and domesticated international concepts to its own reality on access to land for women.

³⁷ www.ohchr.org

³⁸ Encyclopedia Britannica (2002).

³⁹ Pew Research Religion and Public Life Project (2011).

⁴⁰ Siraj, S. (2011). "Not Just Another Custom: Islamic influences on African Land Laws. Essays in African Land Law".

The **African Charter on Human and Peoples' Rights** came into force in 1986 and called for the establishment of a commission to ensure the protection of people's rights throughout the continent. The **Protocol to the Charter on the Rights of Women in Africa**, adopted in 2003, reaffirms the right to adequate housing: "Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, state parties shall grant to women, whatever their marital status, access to adequate housing". In addition, the protocol recognizes women's right to inheritance and stipulates that: "A widow/widower shall have the right to inherit each other's property. In the event of death, the surviving spouse has the right, whatever the matrimonial regime, to continue living in the matrimonial house." Further, women and girls are ensured the right to inherit their parents' properties in equal shares with boys. These articles dealing with inheritance are significant in Africa in that they specifically articulate women's right to inherit, beyond the procedural scope of equality and non-discrimination.

In 2006, the United Nations Economic Commission for Africa and the African Development Bank launched the Land Policy Initiative (LPI), a joint programme of unmatched scale and ambition designed to make land play its proper role in African development and to achieve socio-economic development, peace, security and environmental sustainability. Between 2006 and 2009, through a participatory and inclusive process, the Land Policy Initiative developed the Framework and Guidelines on Land Policy in Africa. In 2010, at the 13th ordinary session of the assembly, the African

Heads of States signed the **Declaration on Land Issues and Challenges in Africa**, calling for the effective use of the framework and guidelines at national and regional levels. Since then, LPI has supported national and regional land policy processes, developing and implementing strategies and action plans to implement the framework, which recognize a wide range of tenure rights of individuals and communities. The framework and guidelines refer both to the African Charter on Human and Peoples' Rights and the 2004 **Solemn Declaration on Gender Equality in Africa**, both recognizing the centrality of access to land for women, who are the primary users of agricultural land in most African communities.

The **Nairobi Action Plan on Large-Scale Land-Based Investments in Africa**, adopted at the High-Level Forum on Foreign Direct Investments in Land in Africa in 2011, also offers an opportunity to support women's access to land by focusing special attention on the protection of the rights of smallholder farmers, a category composed to a large extent of women.

Arab Region

The 19th Islamic Conference of Foreign Ministers (Session of Peace, Interdependence and Development) in Egypt in 1990 adopted the **Cairo Declaration on Human Rights in Islam**. Article 15 states: "Everyone shall have the right to own property acquired in a legitimate way, and shall be entitled to the rights of ownership without prejudice to oneself, others or the society in general. Expropriation is not permissible except for requirements of public interest and upon payment of prompt and fair compensation."

The **Universal Islamic Declaration of Human Rights**, adopted by the Islamic Council of Europe in 1981, and the **Arab Charter on Human Rights**, adopted at the 16th meeting of the League of Arab States in 2004 and ratified by various countries in the Arab world, also protects land and housing rights for all. Overall, with regard to access to land, property and housing rights, these three documents do not deviate much from universal land, property and housing rights.

Further, in 1965, the League of Arab States agreed on a regional rights regime applicable to Palestinians which is enshrined in the **Protocol for the Treatment of Palestinians in Arab States**. Also known as the Casablanca Protocol, the protocol is intended to protect the rights of Palestinian refugees in the absence of systematic international legal protection. In 1990, amendments to the protocol weakened the obligations of Arab States and allowed member states to relegate their refugee policies to national priorities, contributing to the protraction of one of the largest humanitarian crises.

Asia

There are no Asia-wide organizations or conventions to promote or protect human rights. However, in 2015, the Association of Southeast Asian Nations (ASEAN), including 10 countries in South-East Asia, adopted the **ASEAN Human Rights Declaration** that recognizes the right to adequate and affordable housing, a **Declaration of the Advancement of Women in the ASEAN Region** and the **Declaration on the Elimination of Violence against Women in the ASEAN Region**.

Europe

Significant Muslim communities live in Europe where the **European Convention on Human Rights** was adopted by the Council of Europe in 1950 to guarantee civil and political rights, including the right of non-discrimination and protection of property. Implementation mechanisms include the **European Court of Human Rights**, where alleged violations of the rights and freedoms guaranteed by the convention and its protocols are referred to. Apart from inter-state complaints, the court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation if national remedies have been exhausted. The **European Social Charter**, which came into force in 1965, aims to secure many social and economic rights – including the right to housing – and provides for a reporting procedure and a collective complaints procedure allowing a wide range of stakeholders to submit complaints on unsatisfactory applications of the charter.

2.3 STATE LAW

Without underplaying the importance of global and regional frameworks, there is no doubt that – in all countries – national constitutions, policies, laws and regulations have the biggest role to play in ensuring inclusive access to land and housing for all, including women. Not all countries have constitutions, or written constitutions, or policies that regulate matters relevant for women's access to land, however – when they are in place or are being developed – such frameworks usually have the potential to bring about change.

Countries' **constitutions** outline the fundamental principles on which states are based and often they define important principles that can have direct or indirect impacts on women's access to land and housing. The drafting of a new constitution is often an important moment of dialogue and re-establishment of the social pacts between different groups at country level and can be an important occasion for the re-establishment and renegotiation of the conditions for women's rights, including land rights. Countries' **policies** provide strategic guidance on the actions that are most likely to achieve desired outcomes in a specific field or sector. It is very important that the key principles of gender responsiveness and equitable and inclusive access to land⁴¹ are included in such frameworks.

It is, however, at the level of **national laws and regulations** that women's access to land is regulated in more detail. Women's access to land is generally regulated by laws in the field of personal law, marriage and divorce laws, laws on inheritance and land rights. In most Muslim-majority countries and countries with significant Muslim minorities - with some noticeable exceptions - statutory law normally does not discriminate against women with regard to land-related provisions and it is often more progressive than customary or religious law. There is also the further complication that most countries apply different personal laws to members of different religions and therefore different personal laws would apply to Muslim women and women of

different religions living in Muslim-majority countries.

There are, however, some discriminatory patterns that can be found in state laws in Muslim-majority countries and countries with significant Muslim minorities. **Inheritance law** is one the areas of law where the influence of Islamic land provisions strongly influenced statutory law, resulting in the latter reiterating different shares of inheritance for men and women. The applicable rules to inheritance become even more complicated and discriminatory when it comes to inheritance for children outside of Islamic marriage (*nikah*)⁴² or children from a marriage between a Muslim woman and non-Muslim man, which also has repercussion for the women themselves. Module 4 focuses on this topic.

Many countries have strengthened **women's rights in a divorce** to ensure greater gender equality. Divorce laws in many countries provide that women are entitled to keep their separate property plus half the joint marital property.

One area where many countries, particularly Arab countries, apply gender discriminatory provisions is **citizenship law**, which considers nationality patrilineal and women may not pass their nationality to their children or their husband upon marriage. As registration of land and property rights is often tied to nationality, this creates gender-related discrimination with regard to housing, land and property rights.

41 "How to Develop a Pro-Poor Land Policy: Process, guide and lessons" (2007). UN-Habitat and GLTN.

42 Sait, S. & H. Lim (2006). *Land, Law and Islam*. London: Zed Books.

TURKEY

How marital property rights for women increased through secular legal reform.

In Turkey, efforts to enhance property rights for women began during the Ottoman Islamic rule, during which the property rights of Muslim married women were ahead of European practice. The *Tanzimat* Reforms (1839-1876) extended the property and land rights of women through classical Islamic law which governed the separation of property. After the official abolition of the Caliphate, the Turks adopted the 1926 Civil Code which, inter alia, emulated the Swiss model of a joint approach for inter-marital property gains, based on the German earnings partnership approach (*Zugewinnngemeinschaft*).

The most significant change brought about by the reform was the introduction of civil marriage which needed to be registered, and that both spouses could initiate divorce based on enumerated grounds. However, while the wife did retain control of her individual property rights, all types of property entering the family unit were under the control and management of the husband; the husband's general duty was to protect his wife's interests. In practice, women lost out as most property tended to be registered in the husband's name, thus depriving women of much of the marital property upon dissolution.⁰² The new system struggled to take hold in Turkish small towns and villages where the vast majority of the population resided.⁰³

In 2002, a new Civil Code finally replaced the old one and brought about a greater level of gender equality in marriage with the husband no longer the leader or the representative of the family. The married couple is free to contractually choose a form of marital property ownership as provided by the law, where joint ownership is among the forms provided by the new code. Significantly, the community property regime with equal shares between spouses became the default. Where there is co-ownership of property and a spouse provides evidence of a predominant interest in this property, he or she can, besides the legal measures, demand that this property is allotted undivided to him or her against compensation. Each spouse retains individual ownership rights over his or her personal property, or that which was acquired prior to the marriage or received as personal gifts during the marriage. More specifically, both spouses have equal rights over acquired property and the marital home. The success of Turkey's experiment with the Swiss code lies in balancing the progressive changes "while actually maintaining much of Muslim law and custom".⁰⁴

02 Süral, N. (2003). "Legal Framework for Gender Equality". In *Bridging the Gender Gap in Turkey: A Milestone Towards Faster Socio-economic Development and Poverty Reduction*.

03 "The Reception of Swiss Family Law in Turkey" (1973). In *Anthropological Quarterly*. Magnarella.

04 Yildirim, S. (2005). *Aftermath of a revolution: A case study of Turkish family law*. *Pace International Law Review*.

KAZAKHSTAN

How marital property rights for women increased through secular law reform in a Muslim majority country.

A variation in the theme of secular introduction of community property principles occurs through communist ideology in the Central Asian Republics, particularly Kazakhstan. The Soviets were the first in Europe to introduce a limited form of the community property regime in 1926, which spread to other part of the Soviet Union and Europe.⁰⁵

From the pre-Soviet times to the present, Kazakh families have followed religious customary norms in relation to marital property, which provided a strong basis for marital property. Kazakhstan declared independence in 1991, adopted a secular constitution and acknowledged a liberal version of Islam. It went in the direction of privatization of land and property and family law reforms. The 1995 Constitution emphasizes non-discrimination, including on the grounds of sex. There are no restrictions on women's right to own, use or inherit property.

The Civil Code of 1999 makes no gender distinction with regard to inheritance and property rights, similar to the relevant legal provisions before 1991. Under the current Marriage and Family Code, community of property has been established, following the standard civil law clauses on marital property. Spouses can change the standard marital contract through an alternate marital property arrangement. Unless the parties agree on their respective shares, the shares shall be considered equal. The division of common property by a court may be made both during marriage and after divorce by either spouse.

However, there are no provisions on the management of marital property. The Land Code 1995 does not establish co-management of the marital property, nor does it provide for registration of that property in both owners' names. Without defined conventions for ownership titles, this law can be considered relatively incomplete.⁰⁶ Nevertheless, Kazakhstan is a positive example of a Muslim-majority country with established statutory legislation protecting gender equality – including on inheritance.

05 "Matrimonial Property in Europe: A link between sociology and family law" (2008). In *Electronic Journal of Comparative Law*, Rešetar, Branka.

06 "The Legal Status of Women in the New Independent States of the Former Soviet Union" (2004). USAID.

Another shortcoming of national laws is the discrimination against **stateless women and men**, as represented by the statutory prohibition⁴³ by the Government of Lebanon in 2001 on the acquisition of rights in property for people who do not hold the nationality of a recognized state, which has severely impacted Palestinian refugees in their HLP rights and related issues.

A number of countries also have **guardianship laws** that require women to seek explicit permission from a guardian to leave the house and engage in social and administrative processes, including transacting and managing land and housing. These laws create some direct constraints on women's access to, use and control over land, but they also contribute to an overall environment of social and economic inequality between men and women that affects women's empowerment and participation.

In conclusion, gender-responsive constitutions, national policies and state laws - and their enforcement - are the main avenue through which increased access to land for women should be pursued. Alignment with international human rights instruments is a key priority to ensure the abolishment of gender discrimination and to achieve equality and independence in accessing, using, controlling, acquiring and transferring housing, land and property. Protection from forced eviction (community, household or individual level) perpetrated by public and private actors needs to

be strongly enforced. The most typical scenario – in times of peace – is that women are forced from their land and houses as a result of physical violence, divorce, widowhood or disinheritance.

2.4 ISLAMIC LAND LAW

Islamic land law is an important framework that can play an important role in increasing access to land for women in the Muslim world. Key local, national and international actors need to be conversant with the key elements of this framework, understand how it plays in contexts of legal pluralism along national laws and other frameworks, and build on it to foster dialogue and collaboration among different communities and groups. This section gives a brief overview of Islamic land law in relation to women's access to land; other resources are better placed to give a comprehensive overview of the topic and its overall relevance for social and economic development of Muslim contexts.⁴⁴

What is Islamic land law

Islamic law (*sharia*) is a man-made code of religious law based on a hierarchy of sources of law, of which the Quran and the *Sunna* are – in this order – the most important ones. There are other sources of law or

44 Key resources: (1) "Islamic Principles and Land: Opportunities for Engagement" (2011) UN-Habitat, UEL and GLTN; (2) 'Sait, S. & H. Lim (2006). *Land Law and Islam*. London: Zed Books; and (3) "Islamic Land, Property and Housing Rights in the Muslim World Training Manual" (2010), UN-Habitat, UEL, GLTN.

43 Presidential Decree N. 11614 of 1969 as amended by Law n. 296 of 2001.

“law-producing mediums” in Islam⁴⁵ and a number of variations in interpretation, depending on different schools of Islamic law. Similarly, there is no single unified field of “Islamic land law”, but key recognizable features drawn from various Islamic fields relating to land can be identified in Muslim communities across the world. Such features are referred to as “Islamic land law” and are an important influence on land tenure regimes and access to land for men and women in Muslim societies, whether or not their states officially recognize sharia law in their national legislation. It is important to recognize that Islamic principles relevant to land are applied with considerable variations – even within countries and communities – in the Muslim world and they intersect in different ways with local customary and statutory norms, depending on the context.

In Islamic law, the Earth belongs to God. People and states have land rights linked to the use they make of the land.⁴⁶ Islamic land law protects a wide range of property rights – including the right to acquire, hold, use, administer, inherit and sell property, including land. Both men and women have

45 Including *ijma* (consensus), *qiyas* (reasoning by analogy), *istishan* (juristic preference), *darura* (principle of necessity or need), and independent personal reasoning (*ijtihad*), evidence of policy and practice through land registers, court records, fatwa, etc. “A Training Course of Land, Property and Housing in the Muslim World” (2010), UN-Habitat, University of East London and Global Land Tool Network.

46 “Land that is not being used can consequently not be owned. Following the same logic, only productive land should create wealth”. See “Islamic principles and land: opportunities for engagement” (2011), UN-Habitat, University of East London and Global Land Tool Network.

autonomous legal identities and separate property rights.

Islamic land law envisages four main types of land tenure: (1) *mulk* - land in full ownership; (2) *miri* – land owned by the state, under which a range of access and usufruct rights for individuals can be created; (3) *waqf* - endowed land, permanently allocated to charitable use for specific beneficiaries, or purposes, or devoted to general or family welfare; and (4) *mawat* - unused or dead land that can be converted into private land through reclamation.⁴⁷ Other classifications of land include *metruke* (common land), *musha* (communal land) and other forms of collective ownership. Women can have access to all these different types of land and, as explained in more detail in Module 4, Islamic inheritance laws on reduced women’s inheritance shares apply to *mulk* land only.

Women and land in Islamic land law

In Islam, a woman has no restrictions on purchasing land from her own earnings, although the low employment rate for women and the increasing prices of land and property makes this not common. Receiving land and property as gifts or as *mahr*⁴⁸ (dower) is also allowed, although not very frequently done. Women retain individual property rights when marrying and may acquire land in their name through inheritance, although women’s inheritance shares are lesser – generally half that of

47 While *mehul* is unused state land liable to be confiscated.

48 *Mahr* is a payment - or promise of such a payment - that a husband makes to the wife at the time of marriage.

men. Women can have secondary rights to land, such as use rights of land and property and to manage or be a beneficiary of *waqf* (endowed land).

Further, according to Islamic law, women retain control over pre-marital property and finances through marriage and, where applicable, beyond into divorce and widowhood. Women can hold titles individually and jointly. This is evident in all the key Islamic legal materials, which generally support women’s right to acquire, hold, use, administer and dispose of property. Muslim women throughout history, whether married or not, have enjoyed an autonomous legal identity and separate property rights. This contrasts with the reality of women in Anglo-American law, where the common law in England, until the end of the nineteenth century, did not recognize the legal existence of married woman and both her identity and rights to property were merged or rather submerged into those of her husband.⁴⁹ Equally, France did not recognize women’s inheritance rights until 1930.

How to increase women access to land through Islamic land law

The implementation of Islamic land law generally occurs in Muslim majority countries through the domestication of the Islamic law (as described above) into national constitutions, policies, laws and regulations; different interpretations and national variations take place in this process. Further, Islamic land law principles

49 Sait, S. & H. Lim (2006). *Land, Law and Islam*. London: Zed Books.

can be called on by the administrators of justice along national laws (formal courts, religious and customary disputes resolution mechanisms, etc. as described later in this module). Lastly, communities and families apply different elements of what they consider to be Islamic law, which can also manifest itself in many different local interpretations and variations, at times – often in the case of women’s access to land – plainly contradicting codified and recognized leading interpretations of Islamic land law.

One of the main challenges posed by protecting women’s access to land through Islamic land law is that it is often misinterpreted or not well known by those who administer it; frequently administrators are traditional leaders or judges who enforce gender discriminatory customary practices under the misunderstanding that they are Islamic practices. In particularly religious or traditional contexts, and where states institutions are weak, such as in fragile or conflict-affected states, developing a better understanding of the provisions of Islamic land law for community members, leaders and justice administrators is an important way to improve women’s access to land and property, although not without challenges. This is illustrated in more detail in Module 4, particularly in the case of Niger, and in other sections of this report.

Often, the debate on women’s land rights in Islam is polarized around the reduced share of inheritance for women. This provision stems from the Islamic assumption that male family members provide for the economic needs of the family, an obligation from which female family members are exempted. However, evidence shows that

MOROCCO

How Islamic reform can increase women's land and property rights

The 2004 Moudawana Family Code of Morocco has brought significant changes to matters relating to marriage, divorce, child custody and guardianship, inheritance and family property matters and introduced the joint marital property regime as an option, constituting a breakthrough for women's rights. The new marital property regime is located within a broader framework of gender equality, which grants husbands and wives joint responsibility for the family and grants adult women the right to exercise self-guardianship freely and independently.

With regard to the administration of property acquired during marriage, Article 49 of the *Moudawana* authorizes spouses to agree on the way this will be managed and divided. It has introduced separate property regimes as the norm, but permits spouses to make a written agreement on the investment and distribution of assets acquired during the marriage. In contrast to modernist codes in other Muslim countries derived from secular, civil or customary codes, the Moroccan Code is derived from Islamic law, specifically the *Maliki* school of jurisprudence, and constitutes an exemplar of modernist interpretations of Islamic law.

The success of the joint marital property scheme depends on the attitudes of the public notaries who are marriage registrars with a religious character (*adoul*), as well as the courts. Many *adouls* point to the "inappropriate" timing of marital property discussions which leads to weddings falling apart. More often, the *adouls* express a lack of confidence in the ability of the young partners to decide on future property matters. Though the *Moudawana* expressly states that adult women may now sign their marriage contract themselves, many *adouls* refuse to conclude such contracts or discuss marital property matters without a guardian (*wali*).⁰⁷ In the absence of a pre-nuptial agreement, courts have been inconsistent in determining property division in a divorce.

Awareness about the joint marital property option is growing among Moroccan women. Global Rights reports that marriages for which a marital property contract was signed increased from 14 per cent in 2006 to 28 per cent in 2007,⁰⁸ which constitutes a significant increase⁰⁹. How Moroccan society will respond to the challenges posed by the behavioural changes admitted by the new code will derive from its drive for greater gender equality and justice. A change of mindset by professional people and community leaders regarding women's roles and their access and control over land and property, will also play a key role, as will women's willingness and ability to step up and claim their rights.

07 Willman Bordat, S., S. Schaefer Davis & K. Saida (2011). "Women as Agents of Grassroots Change: Illustrating micro-empowerment in Morocco." In *Journal of Middle East Women's Studies*.

08 "Conditions, Not Conflict: Promoting Women's Human Rights in the Maghreb through Strategic Use of the Marriage Contract" (2008). *Global Rights*.

09 No consolidated more recent data is found on this. In 2014, Paul Pretitore in "More than Ten Years after Morocco's Family Code Reforms: Are Gender Gaps Closing?", published on *Connecting Voices*, assesses the changes in marriage procedures in Morocco ten years after the *Moudawana*. "Women were given the right to sign their own marriage contracts, effectively eliminating the requirement for consent from a male relative acting as a legal guardian. This could increase a woman's bargaining power both before and during marriage, since the contracts regulate a number of factors such as financial maintenance of the wife by the husband and dowries. Women can also place a number of stipulations in the marriage contract that can protect their interests during marriage, including forbidding polygamy and allowing a wife unilateral repudiation as a form of divorce. There are no comprehensive data to assess the levels to which women are indeed adding such stipulations and the impact of doing so. However, women are not yet signing marriage contracts on their own in large numbers, with women only doing so in around 21 percent of marriages in 2010, a level mostly unchanged since 2007. One possible factor is the strength of social norms that counter this new right for women"

THE MALDIVES

How Maldives balance Islamic legal traditions and compliance with international treaties in the pursuit of women rights, including access to land and property

The island nation of Maldives offers impressive and surprising information on matrimonial property rights. Maldives is ranked second in South Asia on UNDP's Human Development Index (HDI) and Gender Related Development Index (GDI), after Sri Lanka. Maldivian women have always kept their own name after marriage, signed prenuptial agreements to negotiate marital property terms, inherited property and remarried.⁰¹⁰

The country's constitution specifically promotes Islamic Law and Maldives has entered a reservation to Article 16 of CEDAW relating to the equality of men and women in all matters relating to marriage and family relations. At the same time, Maldives ratified the Optional Protocol in 2006, among the first Muslim majority states to do so. Despite the CEDAW reservation, Maldives enacted a family law reform in 2001 that departs in several respects from traditional aspects of Islamic family law norms.

A significant feature is the joint marital property. A 1999 Maldives report to the CEDAW Committee⁰¹¹ records that "in case of divorce, any property which has been registered as joint property is divided equally. Any property which is seen by the court to have been acquired by the couple during their joint partnership in marriage (the woman's domestic and child-care contributions are taken into account) is also divided between the two."⁰¹² The Maldives present itself as a country that balances its Islamic legal traditions and international treaties in pursuit of women's status and women's rights protection.

010 'Population, Gender and Development in Maldives', *Economic and Political Weekly*, Shaljan, 2004

011 'Initial report of States parties: Maldives', CEDAW/C/MDV/1, 1999

012 'The Impact of the CEDAW Convention: Paths to Equality', A.Byrnes and M. Freeman, World Bank, 2012

often women are deprived even of their lesser shares of inheritance because of a group of factors, including ignorance of inheritance provision in Islamic land law. This is illustrated in detail in Module 4.

Further, there is potential for achieving equal access to housing, land and property through the integrated property regime for women within Islamic jurisprudence. This revolves around the holistic approach to property rights for women in Islamic land law, aiming at complementing women's lesser inheritance rights by strengthening other avenues to access housing, land and property throughout her life course by other means (e.g. land purchase, awaqaf, gifts, *mahr* and maintenance). Gender discriminatory customs in family and kinship structures seem to have trumped Islamic principles by making earnings and savings difficult, the *mahr* and maintenance rights nominal, conditional or non-enforceable, and inheritance rights often merely theoretical.

However, Islamic principles and early practices demonstrate that it does not have to be this way and that a reappraisal of Islamic law could empower Muslim women and enhance security of tenure. Whether full equality at scale can be achieved with this approach is beyond the scope of this document, but an holistic approach to increasing women's access to land, working with Islamic land principles and with formal land administration provisions and systems, and supported by broader cross-sectoral interventions are a very effective way of increasing women's access to land in a wide range of contexts, from the most stable to the more fragile ones, whether affected by conflicts or institutional weakness. This will

reverse the current trend where property tends to flow away from women, rather than towards them. The different cases presented in this report illustrate how Islamic land law can be used in the context of legal pluralism along other normative frameworks to increase women's access to land.

2.5 CUSTOMARY LAND LAW

With over 70 per cent of land in developing countries being outside the formal land administration system,⁵⁰ especially the land recording or land registration components, customary land law plays a very significant role in defining the relationship between people and land. Muslim-majority countries and countries with significant Muslim minorities do not differ on this, although in some countries the formal land administration systems are well developed and, at times, regulate a large percentage of the land. This section of the report explores the role of customary law in securing, protecting and promoting women's access to land.

What is customary law

There is no universally accepted definition of customary law; for the purpose of this report, a working definition is that it is an established system of usually unwritten rules, practices and customs of Indigenous Peoples and local communities. Land tenure is the relationship, between people -

⁵⁰ 'Handling Land: Innovative Tools for Land Governance and Secure Tenure', GLTN, UN-Habitat and IIRR, 2012, pg. 23

THE DEBATE: gender equity and gender equality

Gender equality refers to equal access to social goods, services and resources and equal opportunities in all spheres of life for both men and women. Gender equality often requires policy changes as it is strongly tied to women's rights, a concept opposed by some policymakers in conservative Muslim majority countries and that has some indirect, but significant, negative impact on women's access to land.

Gender equity is defined by UNFPA⁰¹⁴ as "the process of being fair to women and men" according to their respective needs. To ensure fairness, strategies and measures must often be available to compensate for women's historical and social disadvantages that have prevented women and men from otherwise operating on a level playing field. This means that women and men should not only have access to opportunities and resources – such as land – but that they should also have access to the means of benefiting from such opportunities and resources. Such means are tailored to the needs, aspirations and conditions of specific women's and men's groups.

The debate on gender equality tends to create antagonism between human rights advocates and promoters of more conservative gender approaches. The concept of gender equity is less polarizing and allows for a more peaceful debate on the common goal of promoting women's access to land and the resulting benefits of achieving social and economic development, and an overall advancement of the condition of women on the ground.

A focus group discussion during the development of these guidelines highlighted how women are less interested in achieving equality with men than in meeting their most important needs: security, stability, independence and freedom for their own benefit and the benefit of their families and children.



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individuals or groups – and land. It defines how access is granted to rights to use, control and transfer land, and the associated responsibilities and restraints. In customary land law, multiple and overlapping rights can be held by different people or groups to the same tract of land. Some people – usually the clan or community elders – have the responsibility of administering land to protect the interests of all the clan or community. Different rights to the same parcel of land belong to different people, such as the right to sell the land, the right to use the land through a lease, or the right to travel across the land. In customary law, “owning land” generally means something slightly different than in the formal land administration system, both for men and women; rights and obligations take different forms and relations than in formal land administration systems.

There seems to be no global pattern of evident or univocal correlation between women’s access to land in customary ways and the quality of access received. Customary law differs significantly across communities in the Muslim world, just as practices in Africa have major differences from practices in South-East Asia, or as practices in Muslim matrilineal communities and Muslim patrilineal communities in the same country vary significantly. However, in most traditional societies, women seem to have unequal access to land and property rights and, in patrilineal societies, women’s access to land has been mediated and mostly made possible by their relationship to men.

In the past, some societies may have protected the interests of women through customary law, but changing socio-economic conditions often resulted in the

old rules failing to ensure that women have access to the resources needed to raise and care for themselves and their families. This is particularly a problem in rural areas that are under increasing economic pressure because of their proximity to expanding urban areas or because they are located in fertile tracts of land and therefore exposed to large-scale land-based investments and cultivation of cash crops. Customary land administration is not able enough to deal with the increasing pressure over land in contemporary economies, population growth, globalization and urbanization. The local communities and the poor – men and women – are both affected, but women lose out particularly badly in such situations.

Various sources seem to agree that women are losing out on their access to land when individual ownership – and formal land administration systems – are introduced into customary settings and the transition of customary held land into formal land administration occurs. Changes in family bonds and balances within communities transitioning from traditional systems⁵¹ to more modern economies have distorted and increased inequalities in access to land, and women have disproportionately lost out in this process. In the Muslim matrilineal Indonesian community of Batu Songgan, for instance, there is resistance to the registration of land since there is a perceived high level of tenure security, and the traditional inheritance systems maintain social functions and bonds that people feel would be lost with individualized family ownership. Gold and silver deposits found

⁵¹ ‘Land Tenure Rights for Women Under Customary Law’, Karima Benbih and Jane Katz, 2014

MALAYSIA

How customary law can coexist with elements of Islamic land law and have a positive influence on women access to land.

Malaysia is a multicultural country of 28 million people, 70 per cent of them Muslim. Girls and boys have nearly equal enrolment rates in primary and secondary schools, young women outnumber young men at university level⁰¹⁵ and the female employment rate is at 43 per cent.⁰¹⁶ Islam is constitutionally the country’s official religion, with the freedom to practice other religions. Sharia law is only applicable to Muslims and is used to resolve conflicts related to religious and family matters.

In the case of inheritance, for instance, women and men in Malaysia have equal rights to own and inherit land under the constitution and land legislation, but Muslim women’s (and girls’ / female children’s) right to own and inherit land is regulated by sharia law and therefore generally half of a man’s in the same degree of relationship. Land ownership is legally based upon a customary Malay law called *Adat Perpatih*, a matrilineal system whereby ancestry land and rights are passed from mothers to daughters to the extent that if the couple does not have any daughters, the ancestry land will go the nieces, female cousins or the nearest female descendants of the mother, rather than to the son/s.

Malaysia’s Adat recognizes joint marital property, or *Harta Sepencarian* in Malay, which is defined as the property jointly acquired by husband and wife during the marriage. The proportion of ownership for the spouses is determined by sharia courts on the basis of the contribution of each spouse,⁰¹⁷ which becomes more relevant in case of sale or division of the property in a divorce.⁰¹⁸ With a divorce or the death of the husband, the wife can claim a third of the value of the land acquired during the marriage, which may be increased depending on the nature of the work done by her on the property.⁰¹⁹ Generally, for instance, where a woman has helped to cultivate the land, she is entitled to half of the property. This synthesis between Islamic law and customs seems to offer good entry points to safeguard the social status and economic protection of women, including through access to land.

In conclusion, Malaysia’s land administration experience is inspired by the respect of both Malay land customs – which are very protective of women’s land rights – and Islamic regulations, which seem to have created an overall positive environment for facilitating women’s access to land and property. Some authors have looked at the *Adat* rule as a particularly striking example of conflict and reconciliation between Islamic law and custom,⁰²⁰ representing both the procedural dynamism of Islamic law and the uniqueness and applicability of Malay customary laws.

The specifics of the Malay case might make it difficult to replicate in contexts where customary law is not as gender responsive. However, the case illustrates how customs are not always detrimental to women’s land rights and can coexist with and be reinforced by other frameworks in the context of legal pluralism with positive and innovative results. The case also demonstrates how joint marital property has been accepted and incorporated into the legislative frameworks, enhancing married women’s rights to land and property.

⁰¹⁵ World Economic Forum’s Global Gender Gap Index (2015).

⁰¹⁶ ‘Study to Support the Development of National Policies and Programmes to Increase and Retain the Participation of Women in the Malaysian Labour Force: Key Findings and Recommendations’, Malaysian Ministry of Women, Family and Community Development and UNDP, Putrajaya, 2014

⁰¹⁷ www.kptg.gov.my/en

⁰¹⁸ ‘Property Rights of Women in Malaysia: A Case Study of Harte Sepencarian’, Ainul Jaria Maidin, 2014

⁰¹⁹ Malaysia, official report, *ibid*, p. 113

⁰²⁰ Harding, A. (1995). *Islamic Law in Malaysia*. YB Islamic & Middle EL 2,

in the ground belong to the clan as a whole and cannot be owned individually, and this would exacerbate conflicts and frictions in an individualized tenure system where women are more likely to be the weaker party.⁵²

Customary law is often found to be discriminatory against people who are not part of the original community and who are thought to not share the same cultural identity and values. This has a negative impact on women who marry into different communities, tribes or ethnic groups than their own and are particularly vulnerable if their husband dies, or if they are divorced or abandoned.

There are good practices in laws and policies to ensure the protection of women's rights in customary or religious systems; divergences between statutory (formal) law and customary and/or religious law can be addressed at the highest level, namely with constitutional protections. In Uganda, for example, the constitution prohibits "laws, cultures, customs or traditions which are against the dignity, welfare or interest of women ... or which undermine their status" (art. 32). The Uganda National Land Policy also commits to reform customary law, to modify the rules of transmission of land rights under customary land tenure, to guarantee gender equality and equity, and to ensure that the decisions of traditional land management institutions uphold constitutional rights and obligations with regard to gender equality. Equally, in Malaysia, the tensions between customary

⁵² 'The impact of religious and customary laws in practices on women's inheritance in Indonesia', Devi Anggraini, ILC and SAINS, 2016

laws and statutory laws have been resolved successfully and to women's advantage, as illustrated in the Malaysia case study. Among Palestinian refugees in Lebanon,⁵³ customs favour some specific categories of women - elderly widows and unmarried daughters - who seem to enjoy relatively more secure claims over their homes than that which is provided for in the legislation.

How to increase women access to land through customary law

As with other laws, customary law can be transformed, reviewed and amended, and the reduction or elimination of gender discriminatory practices is possible. Solutions must be carefully framed by and analysed within the social context to address the specific factors that weaken women's land rights. Change may require iterative, progressive processes, capacity development and collaborative work with customary authorities in charge of land administration and customary justice mechanisms. Supporting women's groups in advocating gender equality within customary systems, supporting change agents such as religious leaders who question discriminatory norms, and promoting women's participation in bodies responsible for interpreting customary law are some of the interventions that have been successful. Gender-responsive customs and practices in women's access / use and control over land should be promoted, and communities should be engaged in discussions about gender-sensitive interpretations of statutory,

⁵³ 'No place like home: An assessment of the HLP rights of Palestinian refugee women in camps and gatherings in Lebanon', NRC, 2014

religious and customary laws⁵⁴ that are often tightly intertwined in Muslim contexts as well as in others. Section 2.6 below provides guidance on how to do this.

2.6 WORKING WITH MULTIPLE LEGAL SYSTEMS

Many countries – including most countries with a significant Muslim population – have dual or multiple legal systems, with statutory, customary and religious systems interweaved with what is generally defined as "legal pluralism". The relationship between statutory, customary and religious law should be – and normally is - determined by the status of customary and religious law in the formal legal system. This varies across countries, ranging from full or partial recognition to non-recognition of religious and customary laws.⁵⁵ Currently some 52 countries formally recognize religious or customary laws alongside legislation⁵⁶ and even in countries where statutory law supposedly trumps customary and religious law, the reality is that custom and religion continue to play a pivotal role in the lives of women and men, even if formal laws seek to restrict their powers.

Most Muslim majority-countries and countries with significant Muslim minorities experience

⁵⁴ 'Realizing Women's Rights to Land and Other Productive Resources', OHCHR and UN Women, 2013

⁵⁵ In countries with different ethnic or religious groups, customary or religious legal systems may stipulate a range of personal laws, therefore changing women's legal status and rights depending on her belonging to specific communities. Family laws on marriage, divorce and inheritance are particularly likely to be subject to plural legal provisions.

⁵⁶ Women Business and the Law, World Bank (2011).

a plurality of legal systems, and there are multiple entry points and approaches to increase access to land, housing and property rights for women in these systems. Such a complex web of overlapping rules, regulations and practices can, however, advantage or – more often - penalise women; for a successful intervention, there need to be an understanding of opportunities and risks in engaging with the different legal systems, before choosing the correct entry points. Some guidance on intervening in legally pluralistic contexts is given below.

Level of penetration

When developing interventions aimed at increasing women's access to land, there is the need to assess the different opportunities and risks in one legal system compared to another. In countries where policies and legislation are in place, institutions are well functioning and there is peace and security, statutory laws are often better placed to protect women's access to land as they are often more gender responsive, progressive and aligned with international frameworks. However, in some countries, national laws and institutions are weak; this often happens in conflict-affected countries and fragile states. There is the need to assess the level and pattern of penetration of different legal systems in the country, as some are stronger in some areas than in others (e.g. rural versus urban areas). Some individuals or groups are more knowledgeable and comfortable in accessing one system rather than another (e.g. educated individuals might be more comfortable in dealing with statutory laws than non-educated members of the society, a distinction that often has a gender dimension), etc.

Acceptance and enforcement

Laws alone are not enough to secure women's access to land. The effectiveness of laws depends on awareness about them, the ability to invoke them, and the capacity of the state to enforce them. When a set of laws and rules is better known and understood by members of the public and its perceived legitimacy it is higher, the level of enforcement is higher. This might be a key factor in deciding, for example, whether attempts to increase women's access to land through inheritance would be more successful through Islamic land laws instead of through the statutory laws in contexts where the enforcement of state laws and formal institutions, including the judiciary, are weak.

Scale, timeframe and cost

The entry point for engagement with a plural legal system also depends on the scale and ambition of the intervention planned and the timeframe available. If the objective is, for instance, to address with urgency a geographically circumscribed problem, where women of a specific village or community are systematically excluded from accessing, using and controlling land, an adequate and effective approach could be to engage with customary and Islamic land law to strengthen the gender responsiveness of traditional actors and religious leaders (see the Niger case study in this report). If the intention is to address nationwide gender discriminatory practices that are partially caused by weaknesses in the national laws and policies, the best entry point might be the state laws and constitutional or policy reforms, using the international frameworks as guidance and inspiration. For the latter, the timeframe of

the interventions will be longer and the level of funding to sustain the required multi-stakeholder engagement much higher.

Intervening organization

The right entry point in terms of the legal system might also be determined by the nature of the intervening organization. For example, a local civil society organization operating in a rural area might have easier access to the customary land administrators to protect women's land rights than an international organization that has country-wide approaches. Both can be effective in their own way, the first in terms of time-effectiveness and high impact on the community, the latter in terms of long-term sustainability. The combined and harmonized efforts of the two would have better results in the short and long terms.

Coordinating initiatives at country level

Normally, various processes that have implications for women's access to land are ongoing at the same time. For example, a land policy reform might be under discussion while a range of local projects is underway and the capacity of the judiciary is being strengthened, including for dealing with land-related disputes. To ensure maximum improvement of women access to land, different interventions should support each other to achieve common goals in a coordinated manner. This will ensure that the longer-term and larger-scale processes take into account, strengthen and build on short-term initiatives, which will also help build consensus and momentum for long-term interventions that can otherwise create dissatisfaction and lack of interest in the local population. On the other hand, short-term

and geographically circumscribed processes can benefit from the continuity given by broader initiatives. Similarly, development and humanitarian interventions with land-related components should be planned together, although the implementation of the different components may have very different timeframes, implementing modalities and different partners.

Clarifying the interface between the different legal systems

To provide good protection for women's housing, land and property rights in legally pluralistic contexts, the different systems have to be harmonized and aligned as much as possible. Clarity should be obtained on the circumstances in which the statutory, religious and customary mechanisms can be applied and interface with each other to avoid jurisdictional confusion and "forum shopping" in terms of dispute resolution, law application and enforcement. Although there are some cases where women benefit from a general flexibility in the discretionary application of different sources of law depending on the need, it has been noted that, overall, women lose out in their rights to land in contexts where there is little clarity on the existing rules and regulations and their application. Ambiguities created by the legal pluralism often accommodate the stronger groups of the society, either the elites, the predominant ethnic or religious groups, or the supporters of a patriarchal model of society.⁵⁷

Harmonize and align the different provisions within the same system

Further, gaps and inconsistencies within the formal legal systems should be identified and addressed, to ensure that women are not discriminated against or lose out on their rights. In Afghanistan, for instance, NRC reports that "the constitutional protection of human rights is somewhat weakened by a number of inherent contradictions between relevant provisions and the lack of clear and effective mechanisms to address the contradictions".⁵⁸ Countries should provide for the amendment and removal of "provisions contained in other areas of law and policy (such as civil codes, family and marriage law, property law, land law and policy) that contradict any new law and policy, so as to ensure a consistent framework that promotes women's human rights and gender equality".⁵⁹

Avoid undermining the statutory legal system

There is a long-standing debate on whether engaging with different legal frameworks undermines the statutory one. The following section gives more details on this debate in relation to the dispute-resolution mechanism. The question is relevant; the decision on whether to engage with a plurality of legal frameworks needs to be made on the basis of considerations that assess how to balance short-term priorities and long-term rule of law state

⁵⁸ 'Strengthening Displaced Women's Housing, Land and Property Rights in Afghanistan', NRC, 2014.

⁵⁹ OHCHR and UN-Women (2013). The report also provides specific examples and case studies.

⁵⁷ 'Islamic Inheritance Laws and their Impact on Rural Women', International Land Coalition, 2016.

building needs. An adequate assessment of opportunities and risks can benefit from an open debate including key stakeholders representing the different aspects and functions of the co-existing legal frameworks.

Capacity development

The different international and national actors engaged in promoting women's land rights in legally pluralistic contexts need to understand the complexity of the different systems and how they interact. Education and capacity development of different actors should not include only specific aspects of the legal framework, but the whole spectrum of rules and norms present in the legal pluralism.

2.7 ACCESS TO JUSTICE AND DISPUTE-RESOLUTION MECHANISMS

It is often said that “a law is as good as its implementation” and that “rights mean little if they cannot be claimed and enforced”;⁶⁰ access to justice and dispute-resolution mechanisms is crucial to satisfy both these points. Just as for the legal frameworks, most Muslim countries have a plurality of dispute-resolution mechanisms that can be categorized as statutory, customary and religious. The laws used in such mechanisms, however, are often a combination of the different existing systems of law and, at times, there is not

much difference between them, both in terms of capacity and outcomes.⁶¹

Comparative (dis)advantages of dispute-resolution systems

While courts are widely used in states with strong institutions, in fragile states and contexts affected by conflict and displacement, justice and the rule of law are often administered through customary mechanisms, especially in matters related to family law, including access to land and property. In many Muslim countries, customary land dispute resolution mechanisms, in particular, still seem to be better placed than formal court systems to respond to women's needs for a variety of reasons. Gender equality in front of the law is not often the key reason, though.

In Gaza, between 2004 and 2010, there was a 20 to 25 per cent increase in cases heard before customary dispute-resolution mechanisms, rather than in formal courts,⁶² as illustrated in the case study. In Indonesia, a survey undertaken by the United Nations Development Programme showed that in post-tsunami Aceh, the Islamic court system was regarded as being considerably more trustworthy and transparent in respect to land matters than general courts.⁶³ In Afghanistan, a high level of dissatisfaction with formal court decisions is evidenced by the very high proportion of decisions

⁶¹ 'Strengthening Displaced Women's Housing, Land and Property Rights in Afghanistan', NRC, 2014

⁶² NRC, 2013

⁶³ "Managing Conflict and Sustaining Recovery: Land administration reform in tsunami-affected Aceh" (2008). Working Paper 4, Asia Research Institute, Fitzpatrick.

⁶⁰ OHCHR and UN-Women (2013).

that are challenged (80 per cent of primary courts' and 70 per cent of appeal courts' decisions).

Further, mechanisms that have more legitimacy are more likely to be enforced by the community; this is a particularly important aspect, especially in contexts where law enforcement by the state institutions is low or absent. In Pakistan, for instance, rulings on inheritance issues are perceived to be internal to the family and a private matter left to the parties to implement.⁶⁴ The effectiveness of such interrelations, especially with regard to women's access to land, is, however, yet to be demonstrated.

In the Puntland State of Somalia, comparative studies show a preference for customary and religious land dispute resolution systems, which have resolution timelines of a month or less, over formal courts hearings, which last years and are expensive.⁶⁵ In South-Central Somalia, the Islamic courts became popular because they were procedurally flexible, brought in various constituents, and adopted the guiding principles of negotiation and mediation.⁶⁶ Almost a decade later, the Al-Shabaab group, generated from the militant wing of the Islamic courts and controlling large tracts of Southern Somalia, has the reputation of being able to solve land disputes in a short time frame and fairly. The incoming

⁶⁴ 'Islamic Inheritance Laws and their impact on Rural Women', ILC, 2016

⁶⁵ Harmonization of the Legal Systems Resolving Land Disputes in Somaliland and Puntland, UN-Habitat and LAW, 2016

⁶⁶ Land, Property and Housing in Somalia, UN-Habitat, NRC, UNHCR, 2008



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federal government will have to be able to demonstrate an equal or increased level of efficiency, fairness and accountability to gain the full support of the population. This example also shows how land allocation and land rights protection is a key element of state building (either by terrorist groups or by legitimate governments).

Overall, customary, religious and community based land processes, including land dispute-resolution mechanisms, seem to respond better to the needs of women in the short to medium term, especially in fragile and conflict-affected contexts.⁶⁷ The primary reasons are the physical proximity, lesser costs, and better knowledge of the land processes and the way they operate. These are not the only reasons, as illustrated in the section below.

It is, nevertheless, important to strengthen the gender-responsiveness of the different dispute-resolution mechanisms, including the religious and customary ones. This entails assessing strengths and weaknesses of the systems, developing the capacities

⁶⁷ Sait 2013b

of the people who have decision-making functions, and introducing gender-responsive changes into the procedures and the norms followed when possible, etc.

“Family-friendly” dispute-resolution approaches

Customary and religious dispute-resolution mechanisms are perceived as being less confrontational and more respondent to women’s desire to preserve family relations.⁶⁸ Evidence shows how in Senegal, for instance, the majority of cases brought to court by women are those in which family relations are not a factor and there is no threat to family cohesion. In India, women tend to bring cases to court on behalf of the family to protect family interests, but without staking an explicit claim for themselves in the hope that the family will acknowledge their role and give them a share.⁶⁹

The importance of avoiding confrontation with their families is particularly evident for displaced women, as maintaining social relations with families is extremely critical for their survival and physical safety. Research shows that a woman asserting her rights to land, housing and property faces the “impossible choice” of deciding between upholding an inheritance claim, for instance, and continuing to live with her family. Documented results of women’s attempts to defend their rights in courts include being abandoned by their families, bringing “shame” on the family and the husband because it is perceived as his

not able to provide for her, physical and psychological violence, assaults, death threats and murder of women or their family members. It is therefore not surprising that displaced women “dare to confront family members and established norms only as a last recourse and when facing absolute destitution and having exhausted all other possible avenues to provide for themselves and their children”,⁷⁰ and when they do so they tend to look for less confrontational solutions – such as mediation or customary or religious mechanisms – rather than to formal courts.

Strengthening access to justice for women

As for the legal frameworks, coherence needs to be brought to the formal, religious and customary systems to ensure that women’s rights do not fall between the cracks in the systems.⁷¹ Legal procedures need to be streamlined so that they cannot be manipulated to exclude women. A hierarchy between the different dispute-resolution mechanisms needs to be established and the way they interface with each other needs to be clarified.

Further, checks and balances need to be put in place to rigorously assess the validity, strengths and weaknesses of traditional and religious dispute-resolution mechanisms. In the past, there has been a shift in the international community approach towards traditional justice and, while it is recognized that it may be the only possible

70 “Life Can Change: Securing housing, land and property rights for displaced people” (2014). NRC.

71 OHCHR and UN-Women (2013).

68 (IRIN 2013)

69 ILC, 2016

PALESTINE (GAZA)⁰²¹

How customary dispute-resolution mechanisms fill the gaps left by the formal courts system in a fragile conflict-affected context

The well documented case⁰²² of the evolution of the land dispute-resolution mechanisms in Gaza shows how, in a context affected by protracted conflict, where institutions are weakened and capacities and resources to maintain them are scarce, people and women turn to the customary justice system.

The civil (*nizami*) courts have jurisdiction over land claims and disputes, but were severely weakened when the Hamas took over Gaza in 2007. The existing shortage of judges was strained by the replacement of the Palestinian Authority judges with new Hamas appointees, many with little or no experience. The 37 remaining judges serve a population of 1.7 million, resulting in long delays and people turning away from *nizami* courts. Some women also felt that taking cases to court worsened their relations with family members, although others felt it was a risk worth taking in the pursuit of their rights, both as a matter of principle and as an economic necessity.

Individuals continued using sharia courts, considered to be faster and cheaper than *nizami* courts and reasonably fair to women, in spite of a lack of female representation. However, even the lesser costs proved to be still too expensive for the impoverished and displaced population. According to a NRC research, between 2004 and 2010 there was an estimated 20 to 25 per cent increase in cases heard before customary dispute-resolution actors (amounting to 41,000 cases over the period), such as the *mukhtars* (family leaders and clan elders appointed by and registered with the Ministry of Interior and assigned to specific families, neighbourhoods, camps, areas, tribes or cities), the *islah men* (traditional mediators also being registered), the *rabita committees* established by the Hamas-affiliated Palestine Scholars League and the *islah committees*.

Rabita committee members receive a monthly payment, which allows the services provided by them to be given free of charge. The main weaknesses with customary dispute-resolution mechanisms in Gaza appear to be that disputants have no obligation to cooperate with the process and there is no enforcement mechanism (except for *rabita* committee decisions that can be enforced by the police, such as formal judicial rulings⁰²³). Further, *mukhtar* are often part of the extended family and therefore have a personal interest in the disputes, making them less impartial and effective. However, in spite of the visible shortcomings, alternative dispute-resolution mechanisms fill the gap left by the formal system, providing a viable – although imperfect – solution to land, housing and property rights conflicts for the short to medium term.

021 “Realities from the Ground: Women’s housing, land and property rights in the Gaza Strip (2013). NRC.

022 “Life Can Change: Securing housing (2014) NRC and “Realities from the Ground: Women’s housing, land and property rights in the Gaza Strip (2013). NRC.

023 “Customary Dispute Mechanisms in Gaza” (2011). NRC.

short-term option in countries with failed institutions and complex legal pluralism, the consequences of this choice for women's rights, including HLP rights, are yet to be understood and might not be as positive as hoped. Women's organizations and social activists have criticized the increasing international support for traditional dispute-resolution mechanisms on the basis that it diverts attention and funding away from statutory systems which need them to function and are often closer to international standards, it legitimizes customs that are often discriminatory towards women and it indiscriminately reinforces the power and influence of few local actors regardless of their records.⁷²

Overall, justice mechanisms need to be geared towards and held accountable for the protection of women's rights to land and property; the necessary human, financial, legal and technical resources have to be made available to ensure justice mechanisms are able to provide this function.

A comprehensive range of interventions have to accompany formal and non-formal courts, including accessible and affordable legal aid, legal information and counselling, legal assistance, representation and mediation,⁷³ listening centres or law shops (boutiques de droits),⁷⁴ etc. Legal accessibility needs to be improved through the increase of legal literacy, simplification and popularization of legal texts, and use

⁷² "Strengthening Displaced Women's Housing, Land and Property Rights in Afghanistan" (2014). NRC.

⁷³ "Life Can Change: Securing housing, land and property rights for displaced people (2014). NRC.

⁷⁴ "Islamic Inheritance Laws and their Impact on Rural Women" (2016). International Land Coalition.

of local languages in legal documents, etc. Different types of practical support need to be provided to women to access justice. This can take a variety of forms, from financial support to the establishment of dedicated local initiatives, to the removal of barriers such as the ability of women to travel or seek independent legal justice and representation in courts.

Capacity development: from judges to traditional leaders and women's associations

Legal professionals such as judges, prosecutors, lawyers and religious and customary justice authorities need to have regular training on women's equal rights to land and how to effectively protect them within the scope of their jurisdiction, and to encourage fair decision-making about women's land rights.⁷⁵ There is the need to positively engage with and develop customary, religious and traditional leaders' capacities to govern land and resolve land disputes, to ensure that gender discriminatory practices are discouraged and corrected, minorities are protected, and the compliance of statutory law provisions is achieved. The dissemination of good examples of cases when the law has been interpreted in favour of gender equality can be another useful avenue.

Lessons can be drawn from countries such as Palestine, Jordan, Syria and Iraq which point to how Islamic land law could be used to increase access to land for women in Muslim contexts with the support of traditional

⁷⁵ OHCHR and UN-Women (2013).

leaders. In Niger, although state law grants equal inheritance rights to men and women, and Islamic land law also protects women's inheritance rights, customary practices exclude women from the inheritance of land. In this context, women successfully resorted to Islamic inheritance rules to claim their rights to land (see the Niger case study).

The capacity of women's associations also needs to be strengthened, as women's empowerment and direct engagement is the key element that will result in women's ability not only to claim their housing land and property rights, but also to improve their overall conditions. This is illustrated across the case studies.

2.8 RECOMMENDATIONS

Women living in Muslim contexts have at their disposal a wide range of instruments protecting their access to land: international laws and frameworks, and national, Islamic and customary laws. Different standards and levels of protection are offered by the different systems, but the analysis provided in this section along with the support of country case studies shows that there is no irreconcilable difference between the systems in recognizing women's rights to land. This creates a space for dialogue and collaboration among human rights advocates, supporters of Islamic law, customary land administrators, women's groups and all other stakeholders willing to engage with the practical implementation of women land rights.

Women's land rights can be advanced with a good understanding of the different legal frameworks coexisting in the Muslim world and how to work with them, and a rigorous analysis of the most effective context-specific entry points for engagement. Improved rule of law, increased legal awareness and legal literacy, better access to justice and dispute-resolution mechanisms, and the mobilization of civil society groups are other interventions needed to close the gap between law and implementation. Coordination of the efforts, alignment of the systems and laws in place, and capacity development for the key stakeholders dealing with these different aspects are the key elements necessary to protect women's land rights in Muslim contexts. The specific recommendations to emerge from this section are:

1. Promote the awareness and understanding of international frameworks at the international and national levels, to stimulate debate and mobilize change.
2. Promote the alignment of national constitutions, policies and laws with international human rights frameworks through concerted efforts and political dialogue.
3. Develop or reform constitutions and laws in an inclusive manner with the participation of women and men, and include gender-responsive provisions, including on land-related issues.
4. Amend citizenship and guardianship laws to ensure that they do not constitute obstacles to the access of land for women and their children.

5. Avoid polarizing the discussion on different sources of laws, but rather promote practical approaches and foster dialogue and among communities or groups with the common objective of increasing women's access to land and, broadly, improving women's conditions.
 6. Increase the knowledge of Islamic land law in contexts where it constitutes an important element of allocating housing, land and property rights; this is particularly important for people in decision-making roles, such as judges or community leaders, but also for families, communities, civil society organizations and women's groups that refer to Islamic land law in the management of their estates.
 7. Develop the capacities and change the mindsets of professional figures involved in negotiating, conducting and registering marriages.
 8. Ensure that misinterpretation of Islamic land law does not infringe on women's rights to land, especially with regard to inheritance.
 9. Promote an integrated property regime, where the different ways of accessing land, property and housing are viewed in a holistic manner and complement each other.
 10. Understand customary laws and practices related to women's access to land to adequately engage with customary laws and authorities.
 11. Monitor and assess the impact of changing customary land administration practices on women's access to land, especially in contexts significantly affected by land-related changes (e.g. peri-urban areas, lands that are passing from customary land administrations to formal land administrations, locations where large investments take place, etc.).
 12. Advocate for gender-responsive change in customary land laws and practices.
- Working with multiple legal systems: specific recommendations**
13. Understand the plurality of legal systems present in the context and strive to harmonize, reconcile and align them. In particular, it is important to clarify the interface between the different legal systems and their relevance and possible use in the different circumstances to avoid forum shopping and jurisdictional confusion.
 14. Assess which existing legal system offers better prospects in terms of time, scale, sustainability, level of knowledge and acceptance by the local actors, enforcement considerations etc when there is the need to intervene. When selecting the best framework as an entry point for action, humanitarian actors planning short-term interventions should think of the longer-term impact of their decision on development issues (e.g. if working with customary land dispute-resolution structures will undermine the formal justice system in the long term).
 15. Do not undermine the state institutions and laws.
 16. Develop the capacities and mind sets of different actors engaged in promoting women's land rights in legally pluralistic contexts to understand the complexity of the different systems and their interaction.

Increasing women's access to justice and dispute-resolution mechanisms: specific recommendations

17. Ensure that women have access to justice and dispute-resolution mechanisms.
18. Develop the capacities on land issues, gender responsiveness, protection of minorities, etc. of the different justice administrators and officers, including formal, religious and customary.
19. Put in place alternative dispute-resolution mechanisms when necessary.
20. Consideration the importance for women of having access to non-confrontational land dispute-resolution mechanisms that do not harm or put family relationships at risk.
21. Mobilize adequate human, financial, legal and technical resources to have functioning justice and dispute-resolution mechanisms.
22. Put in place a comprehensive range of interventions to accompany formal and non-formal courts, including accessible and affordable legal aid, legal information and counselling, legal assistance, representation and mediation, listening centres or law shops, etc.
23. Improve legal accessibility, increase the legal literacy, simplification and popularization of legal texts, increase the use of local languages in legal documents, etc.
24. Put in place different types of practical support that facilitate women's access to justice (e.g. financial support, dedicated local initiatives, removal of barriers to travel or to seek independent legal justice and representation in courts, etc.).
25. Promote, strengthen and develop the capacities of women's associations to deal with land-related and broader development and empowerment issues.



3

HOW WOMEN CAN ACCESS LAND: IDENTIFYING THE BEST OPTIONS FOR THE CONTEXT

WOMEN IN THE Muslim world can own land in their own name or use and live on someone else's land. Both tenure options are valid and need to be strengthened and made more gender responsive, keeping in mind that access to land is often not an end in itself, but a means to achieving other important life objectives, such as adequate housing, livelihood opportunities, safety and dignity, etc.

This module outlines the most common ways through which women access land, and describes the characteristics, advantages and disadvantages of each. It reflects on what can be done to strengthen each tenure option, what options are more strategic depending on the context and the intended results, and what the tenure needs and aspirations of different women in the specific context are.

3.1 OWNERSHIP

Ownership is the most well understood and straight forward way to access land. It is generally considered to be the most secure and preferred type of tenure to which women can aspire, although the reality is more nuanced and complicated.⁷⁶ Women

in the Muslim world can achieve land ownership through different avenues. Some options are similar to those available to men and women in other parts of the world, others are specific for women in living in Muslim contexts. Significant variations exist on how accessible these options are in practice, depending on the country or local contexts (e.g. urban / rural settings; states with strong / weak institutions; peaceful / conflict-affected contexts, etc.). Each of the ways through which women can gain ownership over land has advantages and disadvantages, depending on the specific context.

Purchase

As in other parts of the world, state laws in all Muslim countries allow both women and men to purchase land and housing. Islamic land law also allows it. Prophet Mohamed spoke of property rights for both men and women, and his wives had their own separate property. Historical evidence from several Muslim countries shows that women of all social backgrounds owned, bought, sold, exchanged and endowed property; in all these respects, women are entitled to

⁷⁶ As described in this module under the "Rights of Use" section, and overall in this publication when

referring to the continuum of land rights, customary law and others.

equal treatment with male members of the family.

In practice, however, women do not often purchase land or housing. This is due to interlinked causes, whose specific relevance depends on the country: lower levels of education, unemployment or underemployment, insufficient financial resources, and limited access to credit, especially for women working in the informal sector or “invisible workers” in family businesses. It is more usual for women to purchase their land or house in urban areas than in rural ones, thanks to an enabling environment allowing women to have their own income, enough education to go through the legal process to acquire land ownership, and to overcome the social stigma that in some contexts applies to women living on their own.

Another factor constraining women’s access to land is the male-dominated nature of the land administration sector, both formal and customary or informal. Data from upper Egypt,⁷⁷ for instance, show that even when women buy or sell land, often they do so through a male relative, with dubious undocumented effects on the protection of women’s interests. This is again the result of the combination of women’s education and empowerment and the ability to claim their rights. In countries where guardianship laws are in place, women require the permission and support of a male to purchase land and to carry out the required transaction. This

⁷⁷ Presentation by Fatma Abdel-Kader on “Women and Land” at a brainstorming session on land tools to increase women’s tenure security in Muslim communities, 2-4 March 2014, Cairo, Egypt, Egyptian Surveying Institute.

constrains women’s access to land through this avenue, as well as women’s access to education, employment, a social life, etc. especially with the growing influence of conservative Islam. Module 6 gives further information on how land administration can be improved to women’s benefit.

It is also important to note that the ownership of a parcel of land or a house for a woman does not necessarily mean that she has control over the way such property is used, transacted, made to profit or of how the profit or income generated is used. Therefore, land ownership alone cannot be considered a sufficient guarantee that women’s access, use and control over land are achieved. Nevertheless, increased land ownership for women is an important goal that should be a priority for countries and societies, as it has proved to have a positive effect on women’s enjoyment of a broad range of human rights and it has a positive impact on the social and economic development of the whole family, as outlined in Module 1.

Gifts

Just like men, women can receive gifts (*hiba*) from men or women, most typically from fathers, brothers or husbands. Often such gifts are received at important points in a woman’s life, such as at birth, at the time of marriage or the birth of a child, and they can consist of jewellery, clothing, cash, and also – even if less frequently – land and property. Gifts of land can be with full ownership or restricted to use or enjoyment of property or usufruct. A woman can therefore be the only beneficiary of a land gift or one of the beneficiaries sharing land rights to a particular property.

Receiving gifts is not exclusive to the Muslim world, but Muslim women can be gifted with land and housing to complement their lesser inheritance share, described as an integrated property regime in section 2.4 of this publication. This “integrated life course perspective” is compatible with Islamic land law and it is one of the instruments that Muslim families use at times when doing their estate planning, together with dower and inheritance described below. The promotion of the Islamic land law provision of “gifts” is encouraged by the Global Land Tool Network’s partners as a viable option to increase the ownership of housing, land and property by Muslim women.⁷⁸ An accurate valuation of the land, housing and properties is a key element that can ensure fairness in this process.

Dower (*mahr*)

In Muslim marriages, dower (*mahr*) is a payment that a groom pays, or promises to pay in the future, to the bride at the time of marriage. *Mahr* is the wife’s entitlement and an essential aspect of the marriage; while in some contexts it may not be an absolute legal requirement for the marriage’s validity, in most countries it is not an optional gift and it is an enforceable personal right equivalent to a contract. In Iran, for example, refusal to pay dower could lead to imprisonment. Civil documentation and the presence of a written marriage certificate are very important for enforcing women’s rights through *mahr*. *Mahr* may consist of land, use rights with a pecuniary value, cattle or crops, cash or

⁷⁸ Sait & Lim (2006), and the case of Indonesia in “Islamic Inheritance Laws and Their Impact on Rural Women (2016). ILC.

jewellery. There is considerable variation in the amount and mode of transfer, and the value is usually determined by the socio-economic circumstances of the parties to the marriage. *Mahr* is for the wife’s use only and she can dispose of it as she wishes as she is not expected to offer it to the family, although in practice this often happens. It is also important to note that, by agreeing to *mahr*, the wife has not waived her rights to joint marital property.

The importance and role of *mahr* in protecting women’s access to land has changed over the years. While historically it constituted an important part of women’s wealth and land, in some contemporary Muslim societies it has declined in importance as a social institution. A general lack of awareness about *mahr* rights was encountered among women in Bangladesh,⁷⁹ who often viewed it as “a promise which the husband has little intention of fulfilling”. In Palestine, records from the eighteenth and nineteenth centuries⁸⁰ show that *mahr* amounted to 15 to 20 per cent of middle- and upper-class women’s wealth, but over the years this has reduced. While *mahr* used to be the biggest expense for the husband-to-be, since 1960s the provision of housing for the couple has become the main expense due to rising land prices.⁸¹ This has negatively affected women twice: firstly, the house built or purchased for the couple is often

⁷⁹ Huda, S. (1996). “Born to Be Wed: Bangladeshi women and the Muslim marriage contract”. (PhD. thesis). University of East London.

⁸⁰ “Decline of the Family Economy in Mid-Nineteenth-Century Egypt” (1979). In *Arab Studies Quarterly*. Tucker.

⁸¹ “Women, Property and Islam: Palestinian experience 1920-1990” (1995). New York: Cambridge University Press.



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the husband's property and, secondly, the upward spiral in land prices further limited women's ability to buy land from their *mahr* wealth or other sources of income.

However, across the Muslim world, *mahr* remains an important instrument in the hands of women for many reasons, particularly in case of divorce. If the wife seeks a judicial divorce, she is likely to lose her dower amount, since she is expected to give some compensation to her husband. On the other hand, if the husband requests divorce by repudiation, he is obliged to pay the full dower amount remaining, and this may even discourage men from requesting divorce by repudiation. Such an amount can be used by women to ease the negative financial consequences of a divorce, including accessing some form of land or housing for herself and her family. *Mahr* is therefore often the only asset Muslim

divorcees can access, where joint marital property is blocked or it does not exist. The importance of dower increases in the absence of Muslim divorcees' maintenance payments.

Women also have the option of renouncing their *mahr* rights in exchange for the custody of the children. This aspect is well documented in Afghanistan, where it gives divorced women some additional control over their families and children⁸² and provides some useful lessons on the importance of access to land for the achievement life's objectives. The case also documents how to strengthen women's housing, land and property rights in contexts of displacement and conflict. In this sense, the importance

⁸² "Strengthening Displaced Women's Housing, Land and Property Rights in Afghanistan" (2014). NRC.

AFGHANISTAN⁰²⁴

This case illustrates how mahr is a viable option to strengthen women's independent access to housing, land and property rights in a conflict-affected context characterized by weak state institutions

In rural Afghanistan, inheritance and *mahr* usually take the form of land and are therefore two key sources of women's independent access to housing, land and property rights, constituting an important avenue for the economic empowerment of Afghan women. *Mahr* constitutes an important safety net for women in a country where 76 per cent of the population has experienced displacement and hardship. In most cases, women claim their right to *mahr* when they are in a situation of particular distress, such as a separation, divorce or the death of their husband.

Although *mahr* is a legitimate right recognized by religious and statutory law, as with inheritance, women often only claim it as a last resort in situations of extreme vulnerability where there is no further damage possible to a women's position within the family and community.

About 40 per cent of women interviewed said that cultural norms prevented them from asking for or receiving *mahr*, as it is considered to be very similar to begging, bringing shame on the husband who appears to be unable to provide for his wife. As land is often the only valuable asset, women often use *mahr* as a bargaining tool to negotiate for other important issues, such as maintaining the custody of the children.

The Afghanistan case shows how women *mahr's* rights can be a viable option to strengthen women's access to housing, land and property rights in the short and medium term in a context where statutory law and state institutions have limited reach and influence, especially in rural areas. Traditional dispute-resolution mechanisms can be strengthened to ensure that this option is used more consistently to protect women's rights.

⁰²⁴ *Op. cit.*

JORDAN

How multi-sectoral approaches and sustained efforts from government and civil society, supported by individual champions and with guidance from international frameworks, can have a positive impact on women access to land and overall improvement of women's conditions.

In Jordan there has been little space for women's participation in the economic, political and social life.⁰²⁵ The patriarchal nature of the society and cultural attitudes expecting men to provide for their families reflect negatively on women's economic empowerment and access to land and property. Although Jordan's regulatory framework does not prevent access to land for women,⁰²⁶ women have often been excluded from land ownership⁰²⁷ by their families to the benefit of male relatives, at times with their consent or compliance.

The Arab Women's Organization has revealed linkages between "honour crimes" and issues of inheritance.⁰²⁸ Further, the economic and socially disadvantaged position of women hinders their capacity to purchase land and housing in their name,⁰²⁹ and rural families headed by women tend to be among the poorest because of little access to tenure security and credit.⁰³⁰ But things have been changing over the last three decades and Jordanian women have significantly improved their overall conditions, including access to land and property.

Jordan has been introducing a set of reforms in favour of women and significant investment in education has raised the female literacy rate from 55 to 99 per cent; fertility rates and child mortality has declined; life expectancy has risen and the overall quality of life has improved. In 1992, Jordan ratified the International Convention on the Elimination of All Forms of Discrimination Against Women, although with reservations on certain articles,⁰³¹ and national laws allow women to own, acquire and manage land and properties.

One of the crucial elements of this change has been the involvement of Princess Basma bint Talal, sister of the late King Hussein bin Talal, in the promotion of women's rights. Princess Basma heads the Jordanian National Commission for Women with the responsibility of setting up national strategies in favour of women, in cooperation with governmental, non-governmental bodies and the private sector.

She has also been involved in non-governmental organizations dedicated to the promotion of women's rights, including the Jordanian Hashemite Fund for Human Development (JOHUD) Foundation, an NGO working on, among other related issues, women's inheritance rights. JOHUD stresses that women's inheritance is a legitimate right as regulated by the national law and by Islamic sharia law, and that the deprivation of women's inheritance is religiously and legally baseless.⁰³²

Governmental and non-governmental campaigns in favour of family protection and prevention of violence against women – where deprivation of inheritance is also considered to be a form of violence – also contributed to the creation of a favourable environment, leading to an increase in women claiming their rights. The creation of the National Council for Family Affairs, currently headed by Queen Rania of Jordan,⁰³³ further strengthened the country's commitment to women's empowerment.

As a result of these combined efforts, women land ownership is increasing. The Lands and Surveys Directorate indicates that in 2006, 15 per cent of all property owners in Jordan are women (up from 10 per cent in 1999). The same department also registered

an increase in the number of women registering their properties, from a little over 50,000 in 2010, to over 90,000 in 2012.⁰³⁴

A number of obstacles in the social and economic development of women, in particular access to land, still remain in Jordan. Women are still not equal to men before the law, space for improvement exists in addressing violence against women and the gender gap in politics persists despite the introduced quotas for women.⁰³⁵

However, clear indications of positive development can be seen as a result of the combined promotion of women's rights by the government, the increased support and awareness raising by civil society organizations, and the presence of very influential and well-respected champions of change. Equally, improved access to health and education for all, including women, and the reduction of violence against women seem to encourage women to claim their land rights and therefore gain better access to land and property.

⁰²⁵ "Jordan Country Gender Assessment Economic Participation, Agency and Access to Justice in Jordan" (2013). World Bank Report No: ACS5158.

⁰²⁶ Jordan report to the United Nations Committee on the Elimination of Discrimination against Women, CEDAW/C/JOR/3-4, 2006

⁰²⁷ Mostly through gifts or inheritance.

⁰²⁸ Social Institutions and Gender Index Jordan (2014). OECD.

⁰²⁹ Op.Cit.

⁰³⁰ Jordan, Country Gender Profile, JICA, 2009. Only 44 per cent of female-headed households own agricultural land, and three quarters of them have less than 2 hectares. Also, they have fewer assets than male-headed families and only 21 per cent of them receive loans for agricultural development (as opposed to 43 per cent of the male heads of households).

⁰³¹ Article 9 (relating to the nationality), Article 15 (dealing with the freedom to choose one's own residence and domicile), and Article 16 (with respect to the issue of equality in marriage and family relations); the reservation on article 15 was lifted in 2009 as indicated in 'Reservations on the Convention on the Elimination of All Forms of Discrimination against Women'. See also "Islam and its Practical Application in Jordan: Legal Perspectives" in Arab Law Quarterly 25 (2011).

⁰³² "Women's Rights to Inheritance Realities and Proposed Policies" (2012). JOHUD.

⁰³³ "Violence Against Women: Assessing the situation in Jordan" (no date). United Nations.

⁰³⁴ "Jordan Country Gender Assessment Economic Participation, Agency and Access to Justice in Jordan" (2013). World Bank Report No: ACS5158.

⁰³⁵ "Social Institutions and Gender Index Jordan" (2014). OECD.

of such social institutions for women can be clearly seen although, as with any provision, to work well it requires the existence or the establishment of complementary support systems, such as a functioning court or dispute-resolution system and the presence of social and institutional structures to which women can turn to request information and help.

Inheritance

While there are no consolidated global figures on land acquisition methods, research on specific contexts or communities shows that it is not infrequent that the overwhelming majority of land is acquired by men and women through inheritance, especially in rural areas. Similarly, there is increasing evidence that inheritance is the key avenue for women to acquire independent ownership of land and property in the Muslim world, pointing to the importance of better understanding of how to render inheritance processes more gender responsive. This section gives a short overview on this theme, while Module 4 is fully dedicated to this important topic.

In Islamic land law, the woman's inheritance share is generally half of that of man, although in some rare cases, they may have equal or an even bigger share than a male relative. Muslim women's lesser rights in inheritance are regarded by some as a mark of the inferior status of women under Islamic law, and a key element of concern, especially as state laws in the Muslim world largely reconfirm such provisions, with few noticeable exceptions. On the other hand, others note that lesser inheritance shares for women in Islam are justified by their lesser financial responsibilities for the maintenance of the family.

Customary inheritance rules and male-dominated practices add a layer of complexity that, in some contexts, render the condition of women even more difficult, as seen in the case studies of Niger, Palestine and Jordan. In other contexts, customary law mitigates such disadvantages and provides positive options for women's access to land, as presented in the case studies of Indonesia and Malaysia.

However, challenges in inheritance laws and practices do not diminish the importance of inheritance as a major avenue for women (and men) access to land and property. Governments, women advocates, civil society organizations and development actors need to focus their attention on how to render inheritance practices better regulated and administered, and overall more gender responsive. Module 4 analyses this topic and gives recommendations on how to improve women's access to land through inheritance.

Joint and group ownership

Women can own land in joint ownership or group ownership, which can be of different types. Joint marital property is the property acquired by a couple during their life together and it is probably the type of joint ownership that offers the greatest potential to make a change in the lives of women in the short term and in many contexts. Even in a relatively gender egalitarian society such as Indonesia, only one third of the land acquired during marriage was registered as joint titles; husbands' names figure in most documents, even though women

use the land, sometimes exclusively.⁸³ Joint ownership by spouses should also be the norm when access to land and housing is being provided, facilitated or supported by governments or development organizations. This important paradigm shift, strongly advocated by key stakeholders, is slowly being accepted as the norm by international organizations, but a lot still needs to be done to ensure that joint ownership by spouses is advocated further and more consistently, and is routinely incorporated into land and housing-related interventions, including in conflict-affected contexts. Module 5 is dedicated mainly to this topic.

Joint ownership has, however, other applications, such as the registration of land or housing in the names of more than one family member, brothers and sisters for instance, and it is an option that can be used in addressing issues related to women's inheritance rights. Joint ownership can also benefit women in polygamous marriages, and the option of allocating different shares of a property to different individuals can also be considered. Further, ownership of customary land by women's groups has also been demonstrated as a viable option to secure women's access to agricultural land, for instance in Senegal, as illustrated in the case study.

Joint ownership is not without challenges. It is often associated with complicated and laborious terms and processes that women would have to be subjected to if they are to realize their full rights to land, housing and

property. Such risks need to be mitigated through the simplification of administrative procedures and reinforcing support to women

3.2 RIGHTS OF USE

Although ownership is generally perceived as the best and safest tenure option, including for women, the majority of women in the Muslim world access land and housing through what is sometimes defined as "secondary rights", mostly rights of use to other peoples' properties. Women often gain rights of use to land, housing and property through their relationship with family members, mostly male relatives - fathers, husbands, brothers and children. Such "secondary rights" do not necessarily offer less protection from eviction, as long as the underlying social relationships are solid. Women live and work on their (male) relatives' properties and there are clear indications that many of them do not feel insecure in such arrangements, especially in times of social peace and stability. As in most other parts of the world, children, girls, young women and unmarried women live in the house and on the land owned by the "head of the family", which can be considered in many cases a very secure type of secondary right. Parents of landowners often enjoy equally relatively secure access to land and housing.

The strength to which such options protect women rights, however, heavily depends on several factors: the quality of relationships with the relatives, stability in family composition and power balance within families, changing needs and priorities, preferences of the family members, economic pressure, stability of the society,

⁸³ Brown, J. (2003). "Rural Women's Land Rights in Java, Indonesia: Strengthened by family law, but weakened by land registration". *Pacific Rim Law & Policy Journal* 12.

and many others. Women with a good level of education and who have access to an independent income are generally better able to enforce their secondary rights to land and property, two of the key reasons for this being their ability to voice their interests within the family and access to formal or informal justice systems.

The access to tenure security through secondary rights, however, also poses risks to be mitigated, when possible, or that can make such options totally impractical. One of the most frequent risks is that women are seen as labourers – even free labourers - on the land and property they live and work on, rather than having fuller rights. The recognition of the women's role in decision making, use of land and allocation of resources are key components of their land rights. Efforts should be made by governments, women's groups and civil society organizations to improve awareness and understanding of this aspect. Women's contributions to the household economy and well-being need to be recognized and accounted for⁸⁴, for instance through the documentation and the public acknowledgement of the women's unpaid contribution to the household and the recognition of this concept into national legal frameworks. Another common risk for women is divorce or separation from the household they depend on. They find themselves homeless, destitute and often unable even to recover their investments –

84 In the MENA region, "women spend seven times more time on unpaid care work than men, reflecting social norms on their domestic responsibilities within the family", according to the *Social Institutions and Gender Index report* www.genderindex.org/middle-east-and-north-africa, accessed in January 2018

in cash or kind – made over the years in the land and property where they were living and working.

Women living in conflicts are particularly vulnerable, even more so if they access land and housing through non-formalized user rights. When conflict, displacement or migration occur, families are torn apart and such arrangements are not suitable anymore to secure the necessary protection for men, women and their children.

While working on medium to long term solutions to increase women's land ownership, particular efforts need to be made to strengthen women rights to use and control land, as this is likely to have greater and more immediate effect on women empowerment and social economic development, including for the benefit of their families and children. This is in line with the continuum of land rights approach and offers a wide range of engagement opportunities for different actors in the communities.

Tenancy and lease agreements

Tenancy and lease agreements are a widely used type of tenure; they work well in some countries and less well in others, but they are one of the most important tools that can be used and are rendered more gender responsive and better able to increase access to land and housing for women, including in contexts of displacement or migration. Where there is good rule of law, including access to justice for the parties, tenancy and lease agreements are a valid tenure security option. Tenancy laws exist in several Muslim countries; their monitoring, periodic assessment and review is necessary

LEBANON⁰³⁶

This case illustrates the Norwegian Refugee Council's experience in increasing tenure security through relationship building and written lease agreements in Lebanon.

Since the start of the Syrian war in 2011, a large number of refugees have been fleeing into Lebanon and now constitute over a quarter of the country's population. This has put significant strain on an initially sympathetic host community. In a context where the government has not established any formal camps, over 57 per cent of Syrian refugees end up living in structure owned by the Lebanese host community and, in most cases, paying for rent or utilities. Some live with relatives or friends, squat in vacant or unfinished buildings or government properties, or they build informal settlements on public or private land (often managed by intermediaries). At times, the refugees are allowed to occupy structures in exchange for cheap labour or without payment on humanitarian grounds.

The overall tenure security of the refugees is weak and women refugees in particular are concerned with the payment of rental fees, the negative impact of the tenure insecurity and poor housing conditions on the health of their children. The Norwegian Refugee Council has been working to build tenure security in Lebanon. Through this work the NRC has learned that of the refugees living in private houses, 83 per cent were relying on oral lease agreements, 4 per cent on written agreements, while 13 per cent had no agreement. In informal settlements, 74 percent of households had oral agreements, 9 per cent written and 17 per cent no agreement at all. Thirty-three percent of the people did not know about lease agreements.

An intervention was established in the Bekaa area of Lebanon to strengthen the refugees' ability to stay in their homes and reduce the fear of eviction; this was achieved by improving the relationship between the host communities and the displaced people, and establishing a win-win scenario. The primary activities were to provide information to refugee tenants and landlords about written lease agreements using a template lease agreement and fact sheets on lease agreements and forced evictions.

The rationale was to make clearer to both refugee tenants and landlords their rights and obligations, as clarity and transparency builds trust and reduces the possibility of misunderstanding, conflicts and exploitation. Written agreements served as a conflict-prevention tool, with the advantage of helping refugees to interact with landlords on equal terms, reduce the information asymmetries and help manage expectations; unmet expectations (e.g. the number of individuals that can live in a house) are often at the root of conflict. Counselling and legal assistance for refugee tenants on HLP issues was also provided.

As a result of this project, 15 per cent of the targeted refugees obtained written agreements, others accessed additional rights from landlords and only 7 per cent were evicted later. This shows the important of raising awareness on relevant legal framework and HLP issues, including lease agreements, of providing access to legal aid and of engaging with host communities, landlords and local authorities.

036 "Increasing Security of Tenure through Relationship Building and Written Lease Agreements" (2014). NRC.



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to ensure that tenancy arrangements adequately protect the rights of the tenants and the interests of the landlords, and they create sustainable win-win situations for the parties. A good balance of rights and responsibilities for both owners and tenants needs to be achieved so that trust is built, and good relationships are established and maintained between the parties. Although the most common type of agreement is between two individuals, agreements can be expanded to include more members of the family or even more than one household. This option is used with some success in contexts of mass displacement, such as Iraq. However, complementary measures and further attention to the development and use of this tool can ensure that tenancy and

lease agreements play a more important role in guaranteeing tenure security, even in fragile and conflict-affected contexts, as shown by the Lebanon case study.

As for other tenure options, the lack of documentation, such as personal identity documents, is a barrier to accessing tenancy or lease agreements, especially for women and displaced people; it is therefore important that efforts for the provision of basic legal documents for all individuals are made. Further, support to access dispute-resolution mechanisms – including collaborative dispute resolution – needs to be put in place, especially for displaced populations that might face particular challenges to access formal justice.

Endowment (*waqf*)

An endowment (*waqf*) is an Islamic legal mechanism with which an owner permanently settles land, housing or property and its usufruct or income, for use by beneficiaries for specific charitable purposes (e.g. education, provision of shelter or income for poor people, women, travellers, people in crisis, etc.).⁸⁵ The essential elements of a *waqf* are that a person, with the intention of committing a pious deed, declares part of his or her property – mobile or immobile assets – to be henceforth unalienable and perpetual and designates persons (private *awqaf*⁸⁶) or the public (charitable) as beneficiaries of its yields. Not mentioned in the Qur'an, *waqf* derives its legitimacy primarily from a number of hadiths and is widely present in Muslim communities. The *waqf* creator (*wakif*) can be a man or a woman, although without reliable statistics indicating otherwise, women are probably a minority. Beneficiaries may also be women, according to rules decided by the *waqif's* will.

Historically, *awqaf* have covered large parts of Arab countries and beyond; in 1942, more than 11 per cent of privately used land in Egypt were *awqaf* lands; in 1830, *awqaf* were about 50 per cent of the arable land in Algeria and in 1883 a third of arable land in Tunisia. Under the Ottoman rule, *waqf* land amounted to about one third of the Ottoman Empire⁸⁷ alone. Their size and relevance has been such that some

commentators⁸⁸ consider them to be a major factor in shaping urban spaces and public environments in Muslim cities and towns. Charitable *awqaf* played a major role in providing crucial social services both to the rural and urban populations, including many women.

Awqaf benefited from a total autonomy and used to be “protected” from any interference by authorities, which proved to be useful in cases of foreign occupation, or for the minorities, but was detrimental to newly independent states’ authority in the twentieth century, who generally resorted to putting charitable *awqaf* under the authority of a dedicated ministry of *waqf* while they dissolved private *awqaf*.

In recent years, *awqaf* were eventually abolished, nationalized or highly regulated in most countries, which removed an important way of accessing land from women. However, *waqf* still constitutes an avenue that can be explored for securing women’s access to land in specific cases. *Waqf* properties are, for instance, used to provide subsidized rental housing in Egypt, and for access to land through leases and collateral for loans in Malaysia.

User rights as settlement of divorce

Divorce settlement agreements need to support women’s access to housing and land. However, the provision of maintenance for a divorced wife by the husband is not institutionalized in many Muslim countries.

⁸⁵ For a comprehensive overview of *waqf* see Sait and Lim (2006).

⁸⁶ Plural of *waqf*

⁸⁷ Sait and Lim (2006).

⁸⁸ Hoexter, M., S. N. & Eisenstadt N. Levtzion (eds.) (2002). *The Public Sphere in Muslim Societies*. SUNY Press..

Although significant national or even local variations exist across the Muslim world, in many contexts, for a woman who has contracted an Islamic marriage and was divorced by a decision of her husband,⁸⁹ the right to the specified *mahr*⁹⁰ is the only support that she can ask for. In some cases, such as Egypt or Jordan, a husband may provide compensation (*mutat*), especially when he repudiated his wife without good reason. In Egypt, a husband must also pay a monthly maintenance to the divorced wife for one year after divorce, and for longer if there are children, until they reach a certain age. However, even in the most generous of these compensatory provisions for *mutat*, the sum to be paid to the wife does not exceed the value of a few years' maintenance and falls short of providing access to land and housing, although it can be pursued as a good avenue to cover at least some of the costs of it. Divorce settlement's provisions work better in countries where the rule of law and solid institutions are in place; capacity development of the judiciary and traditional or religious dispute-resolution authorities is needed to ensure they are better able to resolve issues related to divorce in a gender-responsive manner.

⁸⁹ *Khul'* (or *khula*) is a divorce procedure which can be initiated by women in Islam. Under this procedure, women may request unilateral divorce, without justification, provided she refunds her husband partly or completely her dowry. Several countries recognize this procedure, in particular, Algeria, Egypt, Jordan, Mauritania, Morocco, Saudi Arabia, etc. Documentation from some countries, such as Saudi Arabia, shows that applications for *khula* are increasing and are mostly made by employed women who can afford to pay the alimony (return the dowry paid by the husband) and young girls who had been married to older men.

⁹⁰ See section on dower (*mahr*) earlier in this module.

Access to and use of communal land

While women in Muslim-majority countries may exercise their individual land rights, they may also access and have rights to land collectively. This aspect is not discussed here in detail because of the many significant differences in contexts, similar to the considerations made with regard to customary land. However, the way in which communal land arrangements can increase women access to land in individual contexts should be explored.

3.3 RECOMMENDATIONS

Women can have different types of rights over land and housing and they can obtain them in different ways. This module presented the range of options at their disposal. When designing an intervention that aims to increase women's access to land, in line with the continuum of land rights approach, consider what tenure options are available, what advantages and disadvantages they present, what processes are needed to strengthen them, and what are the tenure needs and aspirations of the different types of women. Decision making would be better informed if access to land is monitored by collecting gender and age disaggregated data for the different tenure options. Further, the creation of an enabling environment - where women have better access to education and employment, and increased representation in decision making, where gender-based violence is addressed, and the improvement of women's conditions is high on the agenda of decision makers and key champions - should be promoted.

Increasing women's land ownership: specific recommendations

1. Render land administration more efficient, simpler, faster, cheaper and overall more accessible to women.
2. Promote the use of gifts as a family option in estate planning.
3. Raise awareness and encourage the use of dower (*mahr*) and its recording into written marriage contracts to increase married women's access to land.
4. Raise awareness on the importance of inheritance and increase the knowledge of inheritance rules.
5. Promote joint land ownership, including among spouses.

Strengthening rights of use: specific recommendations

While working towards strengthening women's access to ownership of land and houses, it is important to keep in mind that a large proportion of women can only access land through their relationships with (male) relatives; short- and medium-term strategies need to be developed to strengthen these "user rights".

6. Analyse rights of use that are available and how easily, quickly and sustainably they can be strengthened.
7. Raise awareness and acknowledge the woman's contribution to household income and wellbeing to strengthen the acceptance of women's use rights on family land and property.

8. Improve or develop lease / tenancy laws to ensure that they provide better solutions for women and men, including the displaced, and create sustainable win-win situations between landlords and tenants.
9. Promote written lease / tenancy agreements, support communities in getting information and guidance on how to use them, ensure that accessible and fair dispute-resolution mechanisms are in place and that women are supported in accessing them.
10. Promote the inclusion of women's names in all types of land tenure documents (ownership, lease, occupancy, etc.)
11. Explore *waqf* arrangements in specific countries as an avenue to increase vulnerable women's access to land.
12. Support arrangements for the settlement of divorce that include the protection of divorced women's access to housing and land.
13. Develop the capacities of the judiciary and traditional or religious dispute-resolution authorities to enable them to resolve issues related to divorce in a gender-responsive manner.
14. Explore and promote communal land use for women or women groups, especially in rural communities.



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4

INHERITANCE: ENSURING WOMEN GET THEIR SHARE

THIS MODULE GIVES an overview of the main concepts and practices related to inheritance in the Muslim world and makes recommendations to strengthen women's access to land through inheritance by looking at Islamic inheritance law and beyond. The module is particularly relevant for Muslim women, but it also has relevance for the issues and discriminatory practices faced by women of other religions when claiming their inheritance rights.

Consolidated data and comparable figures on land and property acquisition methods by women are missing for most of the world. With a few exceptions, some of which are in the Muslim world, gender disaggregated data on land are also not available globally. However, from the analysis of several localized cases studies, it can be concluded that inheritance is the main avenue through which Muslim women access independent ownership to land and housing. When a woman owns land, it is frequently inherited land. This is especially true in rural areas. This shows the importance of understanding how to render inheritance processes in the Muslim world more gender responsive.

4.1 ISLAMIC INHERITANCE PROVISIONS

With inheritance rules derived directly from the Quran, inheritance is one of the most detailed fields of Islamic law. Land held in full ownership (*mulk*) is inherited according to Islamic inheritance rules stipulating that a Muslim woman's share is generally half of that of male family members, although in some rare cases, they may have equal shares or, even more rarely, women can access larger shares compared to those of their male relatives. "Islamic inheritance principles do not give the same freedom to decide where [land and] property will devolve as some other systems. However, it is possible for individuals to pass on up to one third of land and other property through a will (*wasiya*) (...). Despite the fact that women often receive lesser shares than male relatives in a similar position, inheritance is an important source of access to land for women, who have a smaller, but specific right to fixed shares under the Islamic inheritance rules."⁹¹ Further, not all types of land – as described in section 2.4 – are subject to Islamic inheritance rules and while *mulk* land "is inherited according to Islamic law, access and usufruct rights to

91 UN-Habitat, UEL, GLTN (2011). *Islamic Principles and Land: Opportunities for engagement*,

state land (miri) are traditionally inherited outside Islamic inheritance rules".⁹²

At the time where the foundations of the Islamic inheritance system were established in the seventh century, Islamic inheritance provisions were the most progressive for women in the areas around the Arabic peninsula and surrounding regions. Their strength was the clear and detailed description of how to administer the properties of the deceased. The underlying principles were the need to prevent a concentration of wealth by redistributing the lands and properties of the deceased among the extended family, the consolidation of family relationships, and the attention given to women by clearly identifying their inheritance shares, in a pre-existing context where women were traditionally excluded from inheritance. The Islamic inheritance system remained unsurpassed for long time – at least on paper - in terms of protection of women's access to land. Further, the detailed sharia provisions on inheritance were consolidated in state legislation, often little altered, and therefore they still have a big impact on how land is inherited by Muslim women.⁹³

In contemporary times, a lot has been written about the unfavourable conditions in Islamic law about women's inheritance rights. In violation of the non-discriminatory provisions of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Muslim woman's share is generally half of that

of the male family members, although in some rare cases, they may have equal shares or, even more rarely, women can access larger shares compared to those of their male relatives⁹⁴. Undoubtedly, the different inheritance rules violate the non-discriminatory provisions of CEDAW and constitute a discriminatory factor in the process of granting women access to land, housing and property. On the other hand, there is the view in Muslim societies, supported by some Muslim women, that argues Islamic inheritance provisions are equitable⁹⁵ because, according to Islamic rules, financial obligations to provide for the family fall on men, and compensatory provisions, such as dower and gifts, are available for women. While it can be comfortably stated that, in practice, in most Muslim families, women are equal or majority contributors to the family economy with either in kind or in-cash contributions, the debate on whether the women's lesser inheritance share is acceptable or justifiable is beyond the scope of this section.

This section, instead, highlights the importance of ensuring that key actors who have a decision-making role on women's inheritance rights in Muslim contexts understand what the Islamic inheritance

⁹⁴ *The detailed description of how inheritance is divided among heirs is beyond the scope of this publication; Islamic inheritance law has developed through interpretation by the various schools of Islamic jurisprudence over centuries both in Sunni and Shia and therefore some differences can be found across Muslim countries, although its main structure was not altered.*

⁹⁵ Wadud, A. (1999). *Qur'an and Woman: Rereading the sacred text from a woman's perspective*. Oxford University Press; Barlas, A. (2002). *Unreading Patriarchal Interpretations of the Quran*. University of Texas Press.

⁹² *Ibid.*

⁹³ For a comprehensive overview of Islamic inheritance law, see Sait & Lim (2006).



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provisions are. This greatly helps in ensuring that – if they refer to Islamic inheritance law to take decisions on women's inheritance share – they follow Islamic inheritance law rather than promoting the often more gender-discriminatory local practices that are mistakenly confused with Islamic inheritance laws. Focus group discussions highlighted how women are often stripped of their inheritance rights by family members who claim that Islam does not allow women to inherit land and housing.

A good knowledge of Islamic inheritance rules is particularly relevant for religious leaders, local leaders, customary chiefs, judges in formal and religious courts, communities, families and, especially, women. The case of Niger is an example of how capacity development on Islamic land law for local religious leaders and community stakeholders helped women to increase access to land. The case of Afghanistan hints at how actors involved

in dispute resolution can support women in claiming their land rights through Islamic practices (*mahr*).

While it is important that key actors have a good knowledge of Islamic inheritance law to protect women's land rights, women's land rights are not always best protected through Islamic land law. Some of the factors to be considered are the presence of gender-responsive state laws on inheritance; the attitude of national and local governments towards promoting religious approaches rather than state law; the scale and timeframe of the interventions being planned; the resources available; and the local capacity on the ground, etc. It is important to note that this section does not aim to promote the use of Islamic land law over other types of laws when protecting women's land rights; rather it attempts to give an understanding of how aspects of Islamic inheritance law could be incorporated into and contribute to initiatives to increase women's access to land.

NIGER

How decentralized land administration and capacity development for local religious leaders and community stakeholders can improve access to land for rural women.

Niger is a largely rural country, highly dependent on agriculture but with very scarce arable land. Female literacy is as low as 10 per cent and, in spite of a 40 per cent female employment rate, 4 out of 5 poor citizens are women,⁰³⁷ with a rural female poverty rate of over 97 per cent across age groups.⁰³⁸ To improve the overall social and economic development of the country, the Niger Government established a Ministry of Social Development, Population, Advancement of Women and Protection of Children,⁰³⁹ and invested in increasing food security through improved and decentralized land management.

In 1993, a decentralized land registration process was established. Local land commissions (*Commissions Foncières*) or CoFo were set up at local level⁰⁴⁰ with the responsibility of popularizing land-related documents, giving individual and joint land titles, giving grazing permission to pastoralists; registering land-related contracts and transactions (including sales, donations, customary rights and claims, rental agreements, and loans); mapping and overseeing the use of joint land-based resources (livestock corridors, grazing areas, forests, water points); and contributing to the preparation of land-use planning schemes and rural concessions. Overall, CoFos managed to have reasonably good penetration in villages and urban areas⁰⁴¹ and the systems were successful in clarifying land tenure issues and strengthening the empowerment of local population on land management issues. Women's access to land, however, remained a challenge and women inheritance rights seemed to be one of the key challenges to be addressed.

In spite of equal inheritance rights being granted by state law and protected by Islamic land law – even if to a lesser extent – customary practices in most communities exclude women from inheriting certain assets, including land. Studies done on the Fulani and Gobiraoua ethnic groups⁰⁴² show how women are completely excluded from inheritance, while a survey conducted in the Maradi Department shows that, when land is abundant, women access and inherit land, but as soon as the resource starts to dwindle, the readjustment is done at their expense and they lose their right to land inheritance. In these contexts, several women resort to Islamic inheritance rules to claim their rights to land.

In light of the high incidence of gender-related land rights discrimination issues, in 2007 the Mirriah Departmental Land Commission (Cofodep) and the Nonviolent Conflict Management Network (GENOVICO), a local NGO, established an initiative to tackle women's land inheritance issues with the support of the Netherlands Development Organization (SNV). During the diagnostic study, numerous testimonies were obtained from women, local leaders and other key players, which confirmed that *marabouts* – Muslim holy men – routinely failed to allocate land to women when sharing inheritance, and the municipal and departmental land commissions confirmed that no woman had been able to secure access to inherited land.⁰⁴³ A large consultation on women's inheritance rights was held, involving the local land commissions (CoFos), civil society organizations, local authorities, traditional leaders and *marabouts*. The discussions concluded that, based on Islamic inheritance rules, women's inheritance rights should be respected and registered by the local CoFos.

Guidelines on Islamic inheritance rules were prepared by a working group comprised of *marabouts*, members of the local NGO and a SNV adviser. The working group

identified all the relevant verses in the Qur'an relating to the sharing of inheritance and translated them into French in a document that was then reviewed and validated by *marabouts*, traditional authorities, women and farmer organizations, representatives of the local authorities and local NGOs, and CoFos. The *Guide Pratique des Droits de Succession des Femmes en Islam*, published in 2010, constitutes a major achievement in clarifying women's inheritance rights in French-speaking Islamic communities. As a result of the awareness raised, a number of women have begun to claim back their inheritance and several women have been able to secure their rights to land.⁰⁴⁴

A similar experience was carried out in the Maradi region by CARE Denmark, where the population is influenced by rigorous Islamic practices disseminated by close-by Nigeria. This situation has increasingly led to women's seclusion at the expense of agricultural activities, thus progressively leading to the defeminisation of agriculture. CARE worked with local religious Muslim leaders, rural women's associations, and savings and loans associations to strengthen the social position of women. Advocacy in favour of women's land rights has given them arguments to claim for their land rights. From 2010 to 2012, an increase was registered in the percentage of women who inherited land (from 4 per cent to 8 per cent).⁰⁴⁵

These cases show how Islamic land inheritance principles and awareness raising of traditional and religious leaders at local level can lead to the enhancement of women's inheritance rights, even in rural contexts where female literacy is very low. The replicability of this approach in other areas and the scalability to the national level, however, depends on the attitude of national and local governments to promoting religious approaches – rather than state law – and on the extent to which national laws are aligned to Islamic inheritance law. Nevertheless, capacity development for religious and traditional leaders, communities and local women is, without doubt, a key element of enhancing women's access to land, especially in contexts where large portions of land are administered with customary systems.

037 Extract from a speech delivered by Dr. Maikibi Kadidiatou Dandobi, Niger's Minister of Population, Women's Promotion and Child Protection, at the 57th session of the Commission on Women's Condition, New York, March 2013.

038 Institut National de la Statistique and Chronic Poverty Research Centre, *Pauvreté Chronique en Milieu Rural au Niger*, presentation at The Fourth United Nations Conference on the Least Developed Countries, 10 May 2011, Civil Society Forum session.

039 Initial and second report of the Niger on the Convention on the Elimination of All Forms of Discrimination against Women, 2001

040 Ministère du développement agricole, Secrétariat Permanent Du Code Rural, *Processus d'élaboration et de mise en oeuvre du Code Rural au Niger, Rapport du Niger à la Conférence Internationale sur la Réforme Agricole et le Développement Rural*, Brésil, Porto Allegre, Mars 2006

041 More than 3,000 villages and tribes out of 15,000 have their CoFos; 145 communes out of 265 urban and rural communes have their communal CoFos; the 36 departments have all their departmental CoFos (Cofodep), and each of the eight regions of the country has a regional permanent secretariat for the Rural Code. At national level, the activities of all local and regional organs are coordinated by the national secretariat for the Rural Code, under the authority of the national committee for the Rural Code. "Gestion décentralisée ou locale du foncier: Le Cas du Niger", *Fiches Pédagogiques*, Comité Technique Foncier et Développement, Adam Kandine (2010).

042 « Analyse de la Situation de l'Enfant et de la Femme au Niger, 2008 » UNICEF.

043 Youssouf Babacar Cissé. *Women's land inheritance rights in Islam: The case of Niger*, p. 1.

044 Youssouf Babacar Cissé, *op. cit.*

045 "Women's Fight for Land: Lessons learnt from CARE Denmark's women and land initiative in Niger" (2013). CARE.

4.2 MINIMIZE THE RENUNCIATION TO INHERITANCE

Section 4.1 describes how Islamic land law protects women's (smaller) inheritance rights through a detailed set of rules often reiterated by national statutory laws in Muslim majority countries. The practice is, however, very different, and women often find themselves stripped of their inheritance rights to immovable properties.

The two key reasons why Muslim women in practice lose out – partially or fully – on their inheritance rights are the denial of their rightful inheritance share and the voluntary – or at times forcibly induced – renunciation of inheritance rights (tanazul). These are two faces of the main land challenge that, if adequately addressed, have the potential of really bringing about a change in the lives of women in the Muslim world.

In their original formulation, Islamic inheritance laws do not contemplate the rejection by a beneficiary of his or her share. However, it has become widespread practice in Muslim countries – also incorporated in the legal processes – that a person, typically a woman, voluntarily renounces her inheritance rights. Analysis of the numerous sources on this phenomenon shows that women give up their inheritance right for a variety of reasons: in exchange for cash or other properties, to preserve family relationships with family members who have higher status or position (often brothers), to keep the property intact,⁹⁶ etc. The

“benefits” of renunciation may include a continuing right of access to a family home, a one-time payment or periodic payments in cash, the offer of protection and the right to access or live on the property for life (user rights), etc.

While renunciation of inheritance rights is, at times, the result of a decision made freely by women on the basis of social and economic considerations, often women are forced to renounce their inheritance or are made to believe by family members – in good or bad faith – that they are not entitled to it. Ignorance of statutory and Islamic laws combined with the deliberate violation of women's land and property rights by taking advantage of gender-discriminatory and widespread social practices badly negatively affect women in many Muslim countries.

Often social norms are such that women face the risk of being cut off from their families if they claim their land rights, which is a major deterrent to them doing so, as well as a major cause of personal and social friction and division.⁹⁷ Women claiming their rights can be judged as being greedy, selfish, putting the husbands in a bad light, or insulting them for not being able to provide for them. Families are not keen to “split the family land” by “giving it away” to the women's “new family”, which is the family of her husband. This risk also sometimes results in daughters being “married to the Quran”; they do not create a new family and remain in their father's



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house with their portion of inheritance.⁹⁸ Further, women refer to justice to secure their inheritance rights only in a few extreme cases to avoid disrupting family relationships on which they often heavily depend and facing disapproval from society, as described in Module 2.

The importance of protecting women's inheritance rights has been increasingly recognized as an area that requires urgent attention by governments, women's groups, civil society organizations and development partners, and a good number of successful initiatives are taking place that constitute good learning opportunities and have the

potential to be replicated in other contexts and countries. Jordan and Palestine, for instance, have taken up the challenge of women's land inheritance issues and offer good lessons to be learnt.

Approaches that have proved to be successful in minimizing the renunciation of inheritance rights by women include awareness raising on the existing statutory and religious inheritance laws; capacity development for judiciary, customary and religious leaders involved in decision-making processes regarding inheritance, women associations, community and civil society organizations; the provision of information and financial, legal aid and practical support to enable women to claim their inheritance rights through courts or alternative dispute-resolution systems; regulate the inheritance renunciation practices to establish clear

96 See the box: “Renunciation of women's inheritance rights: not an excuse to avoid land fragmentation”.

97 *Realities from the Ground: Women's housing, land and property rights in the Gaza Strip* (2013). Norwegian Refugee Council.

98 “Assessing Inheritance Laws and their impact on Rural Women in Pakistan”. Shakil Ghori, ILC and SCOPE.

PALESTINE

How mandated institutions, civil society, and religious institutions can work together to reduce women's renunciation of their housing, land and property rights.

Nearly everyone in the fast-growing and young Palestinian population has basic education, including girls. However, because of social attitudes and protracted economic stagnation, female participation in the labour force is among the lowest in the world, with only 14 per cent of women formally employed,⁰⁴⁶ half of them in low-paid jobs. The gender gap in the labour market is reflected in women's lower access to land. Only 7 per cent of women own a house or real estate property, compared to 57 per cent of men. These statistics have drawn attention to the issue of inheritance and women often not receiving their fair share, however, the problem is often more of a cultural dilemma than a legal one.⁰⁴⁷

Although in Palestine women are often knowledgeable about their rights to inheritance and wish to claim them, the consequences for doing so are high. Women face the risk of being cut off from their families or creating frictions and divisions within the families, which is a major deterrent.⁰⁴⁸ Family is a very important safety net in Palestine, especially as women often return to their family or origin in the case of divorce or widowhood, and brothers are expected to be women's life-long protectors. Losing this contact may have very serious consequences for women and is why many women are reluctant to claim their rights.⁰⁴⁹ A 2006 survey done in Gaza⁰⁵⁰ revealed key issues that hinder women from claiming their inheritance rights. Approximately 60 per cent of women lost their inheritance because of "fear of family boycott"; 13 per cent because of a lack of awareness of their rights; 10 per cent because of ignorance of the laws and procedures related to inheritance partition; 7 per cent because of the lack of financial resources for complaining in a court, and 5 per cent because of the social criticism of a woman who would embarrass her husband.⁰⁵¹

However, women are increasingly willing to claim their inheritance rights as a result of increased awareness-raising and the availability of assistance through lawyers and NGOs. Different groups working on the women's inheritance issue have emerged; they are challenging traditional gender dynamics and creating a conducive environment. In 2003, the Ministry of Women's Affairs (MoWA) was established to facilitate gender mainstreaming in different national sectors. MoWA's mission is to "ensure a legal and policy framework for achieving gender equality by mainstreaming gender and empowering women as essential partners in the building of a democratic state".⁰⁵²

Civil society in Palestine is vibrant and strong. In 2009, there were over 2,100 registered civil society organizations. According to 2006 data, the primary area of intervention of nearly 9 per cent of CBOs was women's rights and well-being. During 2011 and 2012, civil society organizations successfully reactivated the National Committee for the Personal Status Law, a coalition of organizations working to promote gender-equitable legislation, particularly concerning six key issues: marriage age, common wealth, polygamy, divorce, custody and equal legal status (for example as witnesses in marital disputes).

Progress was made with regard to women's rights, particularly through sharia courts. In 2011, three administrative orders were passed by the Chief Justice of the Sharia Court to reduce the vulnerability of women. The orders aimed to ensure that women have access to accurate information in inheritance cases.⁰⁵³ In particular, action was taken to reduce the number of women renouncing their land rights. The decree of 15/5/2011 defines the preconditions required for inheritance renunciation (*Takharuj* or *Tanazul*): (1) Detailed inventory of the movable and immovable belongings of the deceased, signed by all the heirs present in Palestine, and authenticated by the

city council; (2) Report established by three experts to evaluate the belongings to be excluded from inheritance under *takharuj* procedure; (3) Publish the *takharuj* decision in a newspaper for at least a week, under the supervision of the sharia court; and (4) The final *takharuj* decision should not be registered until four months after the death. The importance of this decree is that it imposes transparency of the inheritance process, in terms of inventory, valuation and definition of every heir's rights, and under the control of official bodies, thus breaking the secrecy, hence the potential intimidation, prevailing inside a large number of families.

Civil society organizations, such as the Young Men Christian Association (YMCA) and their partners, are currently lobbying the Palestinian Authority to establish an inheritance department within the Justice Ministry.⁰⁵⁴ Land mediators are active both in the West Bank and in the Gaza Strip to provide guidance and suggest solutions for land conflicts, including about the difficulties linked to inheritance. A few women are among these mediators.

Civil society has also been active in fighting inheritance denial. A major achievement has been a project conducted in 2010-2016 by YMCA-East Jerusalem and a number of women's NGOs with the support of the European Union and DanChurchAid. The project included: (1) capacity development of local community based organizations to lead campaigns on women's property rights issues; (2) study circles and training events for community based organizations, journalists and lawyers; (3) legal aid through a network of CBOs, lawyers and journalists for women whose inheritance is endangered; (4) community and media campaigns on women's right to inheritance; and (5) awareness raising through documentary movies and drama re-enactments.⁰⁵⁵ A number of documents have been produced in Arabic: a guide to inheritance concepts and procedures, another to ways and means of organizing training sessions, a video with women's testimonies, and video with an explanatory cartoon.

In conclusion, Palestinian women are increasingly willing and able to claim their inheritance rights as a result of increased awareness and the concerted actions of NGOs, courts and the justice sector, and responsive legislation. The presence of a legal framework, willing sharia law institutions, tools for awareness and information sharing are key enablers of this change, which is particularly transformative in an environment with high literacy. There is increased evidence of the positive effect that otherwise tragic circumstances, such as conflict and displacement, have on the emancipation of women. In such contexts women are called to step outside the traditional roles to which they have been relegated by male-dominated practices and this allows them to work, be exposed to different realities, meet different people and overall gain the needed confidence to claim their rights.⁰⁵⁶

046 *Against 67 per cent of men.*

047 "Cross-Sectoral National Gender Strategy: Promoting Gender Equality and Equity 2011-2013", Palestinian National Authority, Ministry of Women's Affairs & United Nations Women.

048 "Realities from the Ground: Women's housing, land and property rights in the Gaza Strip (2013). Norwegian Refugee Council.

049 *Op.Cit.*

050 'Woman and Inheritance in Gaza Strip', Women's Affairs Centre Gaza (2006).

051 *The remaining 5 per cent is "other reasons" and "no answer".*

052 "Cross-Sectoral National Gender Strategy: Promoting Gender Equality and Equity 2011-2013", Palestinian National Authority, Ministry of Women's Affairs & United Nations Women.

053 ESCWA

054 www.ej-ymca.org

055 www.ej-ymca.org

056 NRC (2013).

THE DEBATE: Renunciation of women's inheritance rights, not an excuse to avoid land fragmentation

As in other parts of the world, for centuries in the Muslim world, women's renunciation of their inheritance shares has often been promoted and justified as a practice that protects the family estate, avoids fragmentation of land and consolidates the property of the woman's original family.

Initially this was especially in regard to agricultural land, but more recently has also involved urban land. However, an increasing number of tools⁰⁵⁷ and documented practices providing valid options for property and real estate consolidation exist outside and within the Muslim world.⁰⁵⁸

These are worth exploring, not only as a means to remove some of the barriers preventing women from accessing land through inheritance, but also as a way to enhance an efficient and rational use of urban and rural land to the benefit of public and private parties.

057 "Remaking the Urban Mosaic: Participatory and inclusive land readjustment" (2016). UN-Habitat, GLTN, IIRR.

058 Sair, S. & O. Termpra (2015). "Land Fragmentation in Muslim Communities: Traditional challenges and innovative consolidation approaches". 16th Annual World Bank Conference on Land and Poverty.

requirements, timelines and procedures; communication and information campaigns to change the negative attitude towards women who claim their inheritance rights; and complementing initiatives combating the renunciation practices with interventions aimed at increasing women's empowerment and access to education and employment.

4.3 THE COMPENSATORY PROPERTY SCHEME

While longer-term processes leading to more equitable inheritance laws for women in Muslim countries exist, Islamic inheritance provisions should be contextualized into a holistic life cycle approach that looks at inheritance among other ways of transferring land, housing and property to women. This includes negotiation,⁹⁹ "estate planning" and post-inheritance adjustment practices which can involve compensatory schemes that create other opportunities for accessing land and property.¹⁰⁰ For example, in Indonesia, an inheritance distribution process occurs bilaterally through Islamic rules but accommodates the more gender-responsive customary (adat) approaches as well.

The will

Wills are an excellent tool to increase access to land and property through inheritance for Muslim and non-Muslim women and

99 Powers, D. (1993). "The Islamic Inheritance System: A socio-historical approach. In *Arab Law Quarterly*.

100 Cammack, M. (2003). "Islamic Inheritance Law in Indonesia: The influence of Hazairin's theory of bilateral inheritance". *Studia Islamika*.

men. Islamic inheritance law has specific provisions that allow for the transfer of up to a third of the deceased's estate - including cash, land, housing, usufruct or land-use rights and other forms of wealth - through a will (*wasiya*). Though this is not universally applied, it is a valid land and property planning tool that can favour female members to compensate for their lesser inheritance. The rules of Islamic wills are rather liberal, and land or property can also be transferred to those who are not entitled to an Islamic inheritance, such as non-Muslim spouses or illegitimate children. The will is an important medium of land access or land ownership for Muslim daughters or wives, sometimes as significant as inheritance itself.

Gifts

Another obvious tool for estate planning is the *hiba* (lifetime transfer or gift), described earlier, that can involve cash, assets, land ownership or land interests.

4.4 INHERITANCE UNDER CUSTOMARY PRACTICES

Customary inheritance practices vary significantly across the Muslim world. While customary laws can be gender responsive - for instance, in some countries in South-East Asia - there are contexts where they exclude women from inheriting land and property at once. A detailed description of inheritance under customary law is beyond the scope of this report, mainly because of the extensive variations encountered from country to country. There are, however, documented examples of women's successfully accessing land through inheritance in customary

contexts. The Niger case study is an example of how access to land for women was enhanced by locally tailored awareness and capacity development interventions building on Islamic land law provisions, and by working with local communities, women and traditional / religious leaders.

Some Muslim countries, on the other hand, present interesting matrilineal inheritance features. An under-researched area of Muslim matrilineal communities yields further insights into how custom, religion and statutory reforms combine with varied outcomes for gender equality and equitable land and property rights. Matrilocal residence (husband living at the home of wife after marriage), access to inheritance of property through females, and inheritance by females are some of the key features of such customary systems that are far more extensive than commonly assumed across almost all the Muslim world,¹⁰¹ except the Middle East, where no significant matrilineal Muslim community is documented. Such inheritance patterns, however, do not necessarily translate into better control over the use and transfer of land and its resources by women, and interventions targeting the specific contexts would need to be researched and assessed before intervening.

101 Muslim matrilineal or bi-lineal communities include the Minangkabau of Indonesia, the Adat Perpatih community of Malaysia and the Chams of Vietnam and Cambodia, the Mappillas of India, the Moors of Sri Lanka, the Tuaregs of Algeria, the Bobos of Burkina Faso, the Akan of Ghana and the Serer of Senegal, the Digos of Kenya, the Yaos of Tanzania, the Chewa in Malawi, and the Wangazidja of Comoros.

4.5 RECOMMENDATIONS

Inheritance constitutes the main avenue through which women in the Muslim world can access land ownership. Statutory laws, Islamic land and inheritance law and gender-responsive customary practices can all offer important entry points for increasing women's access to land. A set of recommendations emerges from the module to ensure that women do not lose out in accessing this important avenue to accessing land, housing and tenure security.

1. Raise awareness among key actors to ensure that the role of inheritance is understood, and that adequate attention is given to protecting and promoting women's inheritance rights.
2. The capacities of stakeholders dealing with inheritance issues need to be developed to better understand women's inheritance provision under the different legal systems co-existing in their contexts. The key stakeholders include women and families as a whole, judges, religious and community leaders, and civil society and women organizations.
3. Promote a holistic view of estate planning and promote complementary mechanisms to access land and housing that can balance women's lesser inheritance rights with other forms of access to land, particularly wills and gifts.
4. Combat and minimize the renunciation of inheritance rights and the practices of excluding female family members from inheriting parts of the deceased's estate, described more in detail below.

Combat the renunciation of inheritance rights: specific recommendations

1. Information and advocacy campaigns to clarify the provision of the inheritance systems in place, including statutory, customary and religious inheritance laws;
2. Capacity development for judicial, customary and religious leaders involved in decision-making processes regarding inheritance;
3. Awareness raising and capacity development for women's associations, community and civil society organizations;
4. Provision of information and financial, legal aid and practical support for women to claim their inheritance rights through courts or alternative dispute-resolution systems;
5. Regulate the inheritance renunciation practices to establish clear requirements, timelines and procedures; and
6. Communication and information campaigns to change the negative attitude towards women who claim their inheritance rights.



5

MARRIAGE AND JOINT MARITAL PROPERTY: REDEFINING THE PROPERTY REGIME OF THE FAMILY

MARRIAGE PLAYS AN extremely important role in defining women's access to land and it is a key entry point to (re) equilibrate the relationship between the spouses and their access to housing, land and property for the overall improvement of the social and economic development of the family. The two corner stones of this approach – which is valid for both Muslim and non-Muslim women - are awareness raising for the families of the couple and better understanding of how to define property regimes for the couple at the time of marriage. This module describes how marriage contracts and joint marital property contribute to women's access to land, how these instruments are seen and applied in different contexts, and provides recommendations to ensure they contribute to their full potential to land tenure security for women and men in the Muslim world.

5.1 THE LAND RIGHTS OF MARRIED WOMEN

All key Islamic legal sources, particularly the Quran and Sunna, support women's full property rights, irrespective of marital status. Muslim women have absolute rights to acquire property and land throughout their life course and, whether married or not, have historically enjoyed autonomous legal identity and separate property

rights.¹⁰² Yet, marriage often directly or indirectly impacts their legal status, practical opportunities, and the traditional rules through which women access, acquire, hold, use, administer, dispose, inherit and bequeath property, including land.¹⁰³

Marriage has an impact on four types of properties: the personal property that belonged to the wife before the marriage, which needs protection; the joint marital property, including land and housing acquired during the period of marriage; and the access to land and personal property flows during marriage from a range of sources, including inheritance, gifts, income, *waqf* (endowment), *mahr* (dower) and *nafaqa* (maintenance); and the allocation of land and property in the case of divorce.

Joint marital property is an important and still largely untapped avenue to increase access to land, property and housing for women in the Muslim world. It is also an area for confrontation on gender equality and contest between tradition and modernity over the evolving image of the family and

¹⁰² Moors, A. (1995). *Women, Property and Islam: Palestinian experiences 1920-1990*. Cambridge University Press.

¹⁰³ Sair, S. and H. Lim (2006). *Land, Law and Islam: Property and human rights in the Muslim world*. Zed Books.

the interpretation of women's roles. Joint marital property is a very viable marital property regime option that has been accommodated in many Muslim-majority countries and countries with significant Muslim populations. This has happened through legislative change, gender rights campaigns, judicial activism, jurisprudential debates, etc.

5.2 THE IMPORTANCE OF JOINT MARITAL PROPERTY

Joint marital property is the property (including house and land) that is acquired by the couple during the marriage that belongs to both of them on the assumption that – whether or not one of them brought into the marriage more financial assets - the cash and kind contributions of both members of the couple are acknowledged and valued. Joint marital property does not include properties owned individually by a spouse prior to the marriage or acquired as an individual inheritance, income or gift during marriage.

Matrimonial regimes differ radically across countries and sometimes within countries¹⁰⁴ and are broadly divided into “separate property” and “joint property regimes”. Under separate property regimes, each spouse owns the property separately, including land, which is often registered in a single name prior to and throughout the course of the marriage. It does not create any legal presumption of co-ownership of assets acquired by the other spouse.

¹⁰⁴ Almodóvar-Reteguis, N., K. Hushnir & T. Meilland (2011). “Mapping the Legal Gender Gap in Using Property and Building Credit”. In *Women, Business and Law*.

Under the joint property regimes, property acquired or owned during a marriage belongs equally or substantially to both spouses. A differentiation could be made into “community property”, where there is an absolute 50-50 split of all property in a divorce, and “equitable distribution” where an evaluation of each spouse's contributions and entitlements is made. Community property regimes are further distinguished as “partial” or “full”, depending on what happens to the ownership of property acquired prior to the marriage and to the inheritances received during the marriage.

Joint marital property is important for Muslim and non-Muslim women for many reasons. A wife considered to have no independent stake in marital assets would retain no land rights acquired or accessed or ownership interest in their marital home, regardless of how great her contribution has been; in a divorce this would leave her to rely on her family of origin or on the state. This particularly affects married women without significant pre-marital assets or gifts in land and property, income or savings of their own, who rely on property acquired jointly during marriage for their access to land and tenure security. The recognition of joint marital property is particularly important for women in a divorce, especially when inadequate dower (*mahr*) and limited maintenance (*nafaqa*)¹⁰⁵ are provided, and for those who are widowed

¹⁰⁵ “The Mudawwana and Koranic Law from a Gender Perspective: The Substantial Changes in the Moroccan Family Code of 2004”; Aixelà Cabré, Y. (2007) in “Language and Intercultural Communication”; and “What Happens to the Matrimonial Home on Divorce in Islamic Law.” Safwat, Safia M. (1995) in *International Legal Practices* 20.

The specific advantages and disadvantages of joint marital property vary according to individual circumstances as, for instance, women with a higher income than their husbands might prefer to acquire property in their own name. However, in the overwhelming number of middle- to low-income families, wives would be better off with joint marital property, as they can also retain their pre-marital and personal assets. Access to joint marital property contributes to women's empowerment, as it strengthens their property management powers, gives them bargaining power against unilateral divorce and improves their access to credit and other opportunities.

Joint marital property is also an element that rebalances the perception of women's and men's roles within the family, recognizing the important contribution of women to the overall wellbeing and prosperity of the family, and generally giving women more status. Joint marital property regimes put marriage on the moral foundation of “equal co-operative partnership of different efforts”, recognizing both material and non-financial contributions.¹⁰⁶

5.3 JOINT MARITAL PROPERTY LAWS

Joint marital property regimes exist in the majority of countries across the world, and are applied in varieties that depend on the distinct legal traditions and systems. Generally, joint marital property regimes are more likely in civil law systems than in

¹⁰⁶ See for example section 46 of the Singaporean Women's Charter 1961 (not applicable to Muslims)

common law or Islamic law systems. The joint marital property regime originated in civil law jurisdictions, continental Europe and generally South American countries, and is now also found in many common law systems and some Islamic hybrid systems. Variation of such systems are found in the United States of America,¹⁰⁷ Norway, Denmark, Sweden, Germany, Austria and Greece (where there is “deferred” community of property through which spouses have separate property during marriage, but an equal division on divorce), France, Italy, Spain and Croatia (where there is a “limited” joint marital property model administered by both spouses in equal terms), the Netherlands (where there is a “complete” community of property); and in other parts of the world, such as Burundi, Namibia, Philippines, Rwanda and South Africa that have full community property regimes.

In Muslim countries, there is considerable overlap between the three major legal systems - civil law, common law and Islamic law – that has resulted in legal pluralism and hybridity. However, separate property rules are a regular feature in most Muslim societies. In Middle East countries such as Egypt, Jordan, Kuwait, Lebanon, Oman, Saudi Arabia, Syria, United Arab Emirates and Yemen, the separate property system prevails. This is equally true of South-Asia's Bangladesh, India, Pakistan and Sri Lanka. In Africa, several countries follow the separate

¹⁰⁷ Steenhoff, G. (2005). “A Matrimonial System for the EU? in *International Family Law* 74, 2005; Pintens, W. (2003). “Europeanization of Family Law” in *Perspectives for the Unification and Harmonization of Family Law in Europe*, Antwerp/Oxford/New York: Intersentia.

property system, including Mali, Mauritania, Nigeria, Senegal and Sudan. Some countries with significant Muslim populations, such as Indonesia, Iran, Kazakhstan, Morocco, Malaysia, Maldives, Tunisia, Turkey, Indonesia and Malaysia, have adopted joint property systems or offer a choice, often at the time of marriage.

In countries where there are different marital property regime options, the important questions to be asked are: are the people getting married aware of the different choices to be made and their implications? What is the default regime? Which marital property distribution system would apply if the couple failed to make a choice at the time of the wedding?

5.4 ISLAMIC LAND LAW RECOGNITION OF JOINT MARITAL PROPERTY

Marital property law is so intimately related to the social and economic life of a nation that, more than any other branch of private law, it affects the nation's character and sets the course for its legal development. Questions arise in Muslim countries on whether joint marital property regimes are accepted by Islamic law or, rather, if Islamic law recognizes the joint marital property concept. In Islam, women's personal property rights¹⁰⁸ are relatively well-developed and there is documented historical evidence of Muslim women who owned land and

property.¹⁰⁹ However, Islamic legal sources appear to emphasise protecting women's personal property through marriage, rather than wives' claims to the matrimonial property created during the marriage.

As spouses are seen as separate individuals in property matters throughout the marriage, the standard procedure seems to be that each spouse simply walks away from the marriage with his or her individual property (or the properties that are in their respective names). As a result, throughout history, most Muslim marriages were enacted under a separation of property regime where neither spouse had a legal claim to or interest in the property of the other. Some scholars have deduced that since both partners maintain an independent financial status throughout the marriage, Muslim marriages do not create community property.¹¹⁰ Property acquired during the marriage belongs to either the husband or the wife, not jointly to the couple. As such, it is argued, there is no equivalent to marital property or community property under classical Islamic jurisprudence (*fiqh*), and that under Islamic law there is no such thing as marital property to distribute.

The perceived incompatibility of classical Islamic law with concepts of marital property and the supposed inability of Muslim societies to recognize the contributions of both spouses are now being challenged. There are no jurisprudential constraints in

¹⁰⁹ Moors, A. (1995). *Women, Property and Islam. Palestinian experiences, 1920-1990*. Cambridge University Press; Shatzmiller, M. (1995). "Women and Property Rights in Al-Andalus and the Maghrib: Social patterns and legal discourse". In *Islamic Law and Society*.

¹¹⁰ Hallaz, W. (2009). *Sharia: Theory, Practice, Transformations*. Cambridge University Press.

Islamic law for incorporating joint marital property. While the Qur'an specifically prescribes personal property rights and details inheritance rights for women,¹¹¹ it does not explicitly refer to men and women's marital property. As such, there are opportunities to reinterpret marital property in accordance with the general legal framework.

Community property arises as an operation of law which can only be facilitated in a developed legal system and a mature socio-legal culture entailing the recognition of women's property rights and a degree of independent legal status for married women. Muslim women's independent property rights were comprehensively established in the seventh century by the Qur'an, in contrast to most common law countries where such recognition came relatively recently. For example, married women in Britain were only granted the right to hold separate property through the Women's Property Bill in 1870. The legal disability with regard to married women's property rights, which was a feature of past Anglo-American jurisprudence, was never a feature of Islamic law.

The fact that joint marital property does not contradict Islamic laws is also demonstrated by the fact that a number of countries allowed this option through Islamic law reform, as explained in the paragraph below and in the case studies. In particular, there is broad recognition of women's marital property rights under both

the Sunni and the Shia branches of Islam. For example, Iran, which is predominantly Shia, recognizes the option of equal division of marital property. Shortly after the 1979 Islamic Revolution, parliament introduced a provision to the marriage contract that entitles a divorced wife to claim half of the wealth acquired during marriage, as long as the divorce is not her fault. Likewise, among the Sunni schools, three out of the four - *Hanafi* (Turkey), *Shafi* (Malaysia, Indonesia, Maldives) and *Maliki* (Morocco) - demonstrate a capacity to embrace marital property regimes. Marital property is also recognized in Kazakhstan, where *Sufism* - the mystical doctrine of Islam - is influential.

The dominance of the separation of property regimes across the Muslim world is owed in part to the jurisprudential equation of Islamic personal property guarantees to the separation of property regimes, but more broadly to the social structure of the Muslim marriage. Objections to community property regimes do not come from within Islamic law itself, but from the conception of a wife's role and the model of marriage itself. Muslim marital property regimes are negotiated not merely from religious conceptions, but through religion's intersection with custom, family, kinship and the construction of property itself. Yet, the case studies underscore the complex, but often accommodating, relationship between marital property doctrines and Islamic principles.

¹¹¹ See for example Quran 4:7: "From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large - a determinate share."

¹⁰⁸ Sait and Lim (2006).



5.5 JOINT MARITAL PROPERTY IN PRACTICE ACROSS THE WORLD

The majority of Muslims live under separate property regimes, but a significant and increasing number do have the choice to enter into marital property arrangements. In addition to Muslim minorities in European and American countries, marital community property regimes are available to Muslim communities in Europe (Turkey), South Asia (Maldives), West Asia (Iran) South East Asia (Indonesia, Malaysia), Central Asia (Kazakhstan) Middle East and North Africa (Morocco, Tunisia), East Africa (Kenya, Tanzania) and South Africa.

Muslim couples in a number of pluralist societies – as in the case studies of South Africa, Tanzania, Kenya and Israel - have a choice between different marital property regimes (Islamic, customary or secular) at the time of marriage. If they do not choose, the default regime prevails, and this regime varies by country. However, even in separate property marriages, courts in several

countries routinely determine the financial and non-financial contributions of the spouses to family welfare in equitable or an equal division of marital property, including numerous cases involving Muslims. Muslims, for example, living in common law jurisdictions such as Australia, Canada, New Zealand, the United Kingdom,¹¹² the United States of America and much of the Commonwealth States can expect courts to play an important role, as they do in Kenya, South Africa and Tanzania, for instance.

¹¹² Lawson, Royston J. (1991). "A Comparative Study of Domestic Contribution and Family Property Allocation in Australia, New Zealand and the United Kingdom." In *the Journal of Consumer Studies & Home Economics* 15.4: pp. 367-383. See also Buttar, P. A. (1985). "Muslim Personal Law in Western Countries: The case of Australia." In *the Journal Institute of Muslim Minority Affairs* 6.2: pp. 271-282.

To learn lessons from this, it is important to understand the different ways in which Muslim majority countries achieved joint marital property reforms. The varied legal reform methodologies of Muslim matrimonial property regimes include secularization, Islamic re-interpretation, cohabitation of custom and Islamic law, and legal pluralism.

Some Muslim-majority countries consciously adopt community property principles as part of Islamic law reform, as the case studies of Morocco and Tunisia from North Africa explore. Other countries went through the process of Islamic law's acceptance of pre-existing customary community of property system, as in our case studies of Indonesia and Malaysia in South-East Asia illustrate. While custom often is seen as an impediment to gender justice, these examples show how customary rights can sometimes enhance women's property rights.

Another set of countries experienced "secularization" whereby modern Western civil codes were adopted, as in our case study of Turkey, at the threshold of Europe. Secularization also happened through the influence of Soviet communist ideology as in Albania, Bosnia, Kosovo in the Balkans and the Central Asian republics of Azerbaijan, Kyrgyzstan, Tajikistan and Uzbekistan, and explored through a case study of Kazakhstan. Further, there are some countries where Muslim minorities live in multicultural societies under legal pluralist societies and are offered a choice of marital property regimes (e.g. Tanzania, Kenya, South Africa and Israel). India, a country with the second largest Muslim population in the world, does not recognize joint marital property for Muslim women. The practice in the remaining countries with

Muslim majorities, from Jordan and Egypt¹¹³ to Pakistan and Sudan, is mostly separation of property. This analysis shows that there is potential to advocate for an increased use of joint marital property – in Muslim, non-Muslim, civil and possibly customary marriages - across Muslim-majority countries and countries with significant Muslim minorities, as an important way to increasing women access to land.

5.6 THE MARITAL CONTRACT

Couples, including Muslim, non-Muslim and mixed couples, have different options to contract their marriage and applicable family and property law depending on their choice of marriage – religious, customary and civil. Often more than one option exists, depending on the country the couple gets married in.

The Islamic marriage is a spiritual, social and legal contract (*aqd*) between two independent legal entities who have equal status to negotiate terms, including property arrangements. The marriage contract is a key component of the marriage. It is not a pre-nuptial but key to the negotiated terms of the marriage, and property rights. Thus, marriage is not merely a union of individuals but seeks to balance and protect socio-economics rights of broader stakeholders – spouses, parents, children, family and society.

¹¹³ Deif, F. (2005). "Divorced from Justice", in *the Journal of Middle East Women's Studies*; Debs, R.A. (2010). *Islamic Law and Civil Code: The Law of Property in Egypt*, Columbia University Press; El-Kharboutly, M. A. & A. Hussein (1976). "Law and the Status of Women in the Arab Republic of Egypt".

Most Islamic schools such as the *Hanbali*, the *Hanafis* and the *Malikis*, permit spouses in a way or another to add terms and conditions to the marriage contract. Among frequent conditions are those relating to property arrangements, right to work and other freedoms. In most cases, couples enter into a Muslim marriage by signing a contract, called a *nikah* contract. Unlike other cultures, where marriage contracts or pre-nuptial agreements were the prerogative of the elites, this has been an important component of many Muslim marriages. Muslim women – or their parents and guardians on their behalf – have historically used the marriage contract to negotiate their marital terms and their property rights.¹¹⁴

The marriage contract constitutes one of the most positive features of Islamic law and is an important opportunity for enhancing women's equality and rights in the marriage, including housing land and property rights, through the addition of clauses or even separate agreements. This contract can be strengthened, made compulsory, enforced and advertised, but legal negotiations and social support systems need to be in place to ensure that it is used correctly. Judges and similar figures have an important role to play to ensure that the potential of the marriage contract is adequately used in advancing women's rights, as shown in the Morocco case study. Capacity development for judges, people involved in marriage, couples to be, and other key actors is required.

114 Moors, A. (1995). *Women, Property and Islam: Palestinian experiences, 1920-1990*. Cambridge University Press.

In Morocco, Algeria, Tunisia, Egypt or Iran, marital property clauses or separate agreements can simply be negotiated and added on to the main Islamic marriage contract. Women can use these contracts to protect their rights during the marriage and at its dissolution by stipulating clauses on property ownership and division, children, monogamy, her right to work, accounting of unpaid contributions to the household, and matters requiring her consent. In Tunisia, under the Personal Status Code, conditions relating to property can be stipulated in the notarized contract, and contravention of or failure to meet these conditions allows both spouses to apply for dissolution. Conditions can relate to persons or property. The standard marriage contract under the Bangladesh Rules of the Muslim Family Laws Ordinance 1961 permits any additional conditions, provided there is mutual agreement between the two parties, for example stipulations on dower, maintenance, wife's pocket money, etc.

In most countries, re-marriages can or need to be registered as civil marriages. Civil marriages, registered with the statutory civil institutions, can also offer – and in many contexts have to offer – to define the property regime chosen by the couple. The Model Marriage Contract, for instance, can address property rights and financial relations, allowing spouses to stipulate ownership, administration, use and disposition of property acquired prior to and during the marriage. Global Rights is campaigning for development of a model contract with sample conditions in order to give them examples to draw on.¹¹⁵

115 "Conditions, Not Conflict: Promoting women's human rights in the Maghreb through strategic use of the marriage contract" (2008). *Global Rights*.

However, too many women are still unable to take advantage of the opportunities offered by the marriage contract for several reasons. In Morocco and Tunisia, religious registrars (*adouls*) rarely fulfil their obligation of informing the spouses of their marital property options and women are not aware enough of the options that are available to them. The hope is that this may change over time as a result of specific interventions. Governments could enforce obligatory aspects to be decided on at the time of drawing up the marriage contract or make gender-responsive options the standard if a couple fails to express its preference.

Further, in practice, many women still rely on unwritten "oral or verbal marriages", which are still an existing practice in some communities, such as Syrian and Lebanese refugees, and other communities with less access to civil registration institutions.¹¹⁶ Such practices should be discouraged, and registration of marital contracts should be promoted by governments, religious and community leaders and civil society organizations. Women and families should be sensitized on the importance of this.

Polygamous marriages

Land and property issues in polygamous marriages are further complicated. Marital contracts can also play a – probably even more – important role in regulating land and property issues in polygamous marriages, which are legal in many Muslim-majority countries. Women in polygamous

116 Focus group discussion at the Validation Workshop on Women and Land in the Muslim World, organized by GLTN, UN-Habitat, UEL, UTI and AUS in Beirut, Lebanon, 2-3 May 2017.

or customary marriages are often excluded from adequate legal protection and largely ignored by international regulatory frameworks that could guide national legislation, although some countries do regulate this aspect.

5.7 RECOMMENDATIONS

In conclusion, marriage-related processes have a very important role to play in defining and improving women's access to land, housing and property. From this module and the cases studies analysed, a series of recommendations are possible that are valid for Muslim and non-Muslim women and for women entering in religious, customary or civil marriages.

1. Raise awareness among women, families and communities on the importance of marriage in defining land and property regimes of the family, the importance this has for the spouses and their children, and the available options in their specific context. This can be done through public debates and discussions involving different actors.
2. Promote written marital contracts and, when possible, make them compulsory for couples getting married.
3. Ensure that written marital contracts incorporate descriptions of the different options for property regimes from which the couple can choose;
4. Develop the capacities of judges, registrars and other public figures involved in contracting marriage, couples-to-be and their families, and other key actors; and

5. Develop and promote tools that protect women's right to land at the time of marriage, such as a model marriage contract, information and awareness-raising materials, preparatory courses, etc.

Joint marital property: specific recommendations

6. Promote joint property arrangements for married couples.
7. Encourage countries that do not include joint marital property in their legal and administrative frameworks to review their laws to make it possible.
8. Consider setting the joint marital property as the default option if couples fail to explicitly indicate their preferred property regime and the marital contract does not indicate otherwise.

INDONESIA

How marital property rights for women were increased through the adaptation of customary law and incorporation into Islamic legal tradition. The importance of accessible and effective dispute-resolution mechanisms.

With the largest number of Muslims in the world, Indonesia has a number of gender equality features in its marital property regime. Among them is the concept of joint marital property (*harta bersama*). The 1974 Indonesian Marriage Law formally adopted the concept of co-ownership by husband and wife of property purchased during marriage. The binding Indonesian Islamic Compilation (*Kompilasi Hukum Islam*), which outlines the applicable family law for courts, also spells out the innovative doctrine of equal matrimonial property division.

While community property regimes in other Muslim countries were brought about by exogenous or secular pressures, the Indonesian experience emerged from within. Emanating from custom, *adat*, the concept is legitimized within the legal system as an Islamic institution.⁰⁵⁹ Though community property is "not regulated by the Qur'an or Hadith, nor in the jurists' books, it is found in the *adat* of Muslim Indonesians and lives in the legal consciousness of Indonesia as an Islamic principle."⁰⁶⁰ The Indonesian community of property system directly empowers Indonesian women and strengthens their land rights.

Innovative interpretations also apply to inheritance. The 1960 land law (Basic Regulations on Agrarian Principles) broadly recognizes the importance of women's ownership of property. When one spouse dies, half of the joint matrimonial property will be transferred to the surviving spouse, and the remaining half will be added to the deceased's *harta bawaan* and distributed among that spouse's heirs (including the surviving spouse).

Indonesia also proves that accessible and quick dispute-resolution mechanisms give women an advantage. Indonesian women traditionally had the choice of taking property disputes either to the sharia or to secular courts (*pengadilan umum*) where they could rely on national law, *adat* law, or Islamic law. Studies confirm that women are more likely to use Islamic courts for the division of marital property and generally "they won more frequently than did male plaintiffs".⁰⁶¹

Women often perceive Islamic courts as working in their interest, not because the substantive rules constitute an improvement over traditional rules, but because the courts can offer property divisions relatively quickly. The Islamic courts have demonstrated the kind of pragmatism necessary to deal with such a situation in the interest of the weakest party, instead of sticking to their doctrinal guns.⁰⁶²

⁰⁵⁹ Bowen, J. R. (2003). *Islam, Law and Equality in Indonesia: An anthropology of public reasoning*. Cambridge University Press.

⁰⁶⁰ Bowen, J. R. (2008). "Intellectual Pilgrimages and Local Norms in Fashioning Indonesian Islam." *In Revue des mondes musulmans et de la Méditerranée* 123.

⁰⁶¹ Bowen, J. R. (2007). "Fairness and Law in an Indonesian Court. *In Islamic Law in Contemporary Indonesia. Ideas and Institutions*.

⁰⁶² Bedner, A. and S. Van Huis (2010). "Plurality of Marriage Law and Marriage Registration for Muslims in Indonesia: A plea for pragmatism." *In the Utrecht Law Review*.



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EGYPT

How the marriage contract was identified as a key instrument to rebalance the gender relations within the marriage and the land and property regime.

With more than 90 million inhabitants, Egypt is the most populated Arab country and is a major intellectual and religious reference in the region and beyond. Significant variations exist between urban and rural areas, or between upper and lower Egypt, but overall Egyptian society is characterized by patriarchy, and ownership of land and housing is a challenge for urban and rural women. In spite of non-discriminatory state law, less than 6 per cent of agricultural landholders are women.⁰⁶³

It is not considered socially acceptable for women to inherit land, especially in rural areas, and their share usually becomes part of larger family holdings managed by a brother or another relative. At times, families encourage daughters to marry a relative to ensure that land stays within the family.⁰⁶⁴ Where women do own land or other property, they often delegate the responsibility of managing it to husbands or male relatives.⁰⁶⁵ Another key challenge is women's right to the marital home, which is the exclusive property of the husband. If a couple divorce, the woman has no stake in any of the couple's marital assets and has no right to retain ownership interest in the marital home or any other property.

In the preparation of the Cairo International Conference on Population and Development of 1994, a group of jurists, civil servants from the Ministry of Justice and NGOs reflected on how to enhance the legal rights of both spouses. The key method proposed was to add specifications to the marriage contract, including on secondary rights issues. A list of seven issues to be raised in front of the spouses-to-be, in view of incorporating the answers into the marriage contract, were developed, assigning the task of asking these questions to the Egyptian marriage notaries.

Among these questions, some key ones relate to access to housing, land and property. For example, agreement on who keeps the matrimonial home and the household furnishings in the event of a divorce; and agreement that if the husband divorces his wife without her consent and with no reason from her part, she shall have the right to compensation, which they shall specify as a lump sum or a monthly stipend, in so far as this exceeds the rights established in law.⁰⁶⁶ A number of other conditions are also mentioned, including the right to continue studying, and other conditions, to be balanced all together as part of the marriage contract.

Egypt marriage contracts allow for the inclusion of land and property clauses, but this option is still used far too seldom by Egyptian women. More efforts need to be made to raise awareness on the importance of such instruments among the general population and the officials involved in the drafting and stipulation of marriage contracts.

Efforts should be made to see that such instruments are accessible and used by educated and less educated sectors of the society. In contexts where institutions are relatively effective, such as Egypt, a carefully negotiated and drafted marriage contract is enforceable throughout the marriage and after its dissolution, and it is an important and already available tool to increase women's access to land and property.

⁰⁶³ On average, women represent 7.2 per cent of total landholders in Lower Egypt; 3.9 per cent in Upper Egypt; and 4.6 per cent in border governorates, with some significant differences across governorates (e.g. 9.4 per cent in Gharbia to 2.0 per cent in Sohag).

⁰⁶⁴ "Gender Assessment: Arab Republic of Egypt". World Bank (2003).

⁰⁶⁵ SIGI 2014 Egypt Report, OECD Development Centre

⁰⁶⁶ Welchman, L. (1999). *Islamic Family Law, Text and Practice in Palestine*. Jerusalem: WCLAC.



6

LEVELLING THE PLAYING FIELD: REFORMING LEGAL AND ADMINISTRATIVE FRAMEWORKS AND INCREASING ACCESS TO CREDIT AND MICROFINANCE

THIS MODULE ANALYSES other important aspects not specific for the Muslim world that need to be considered to increase women's access to land. Constitutions, policies, laws, land administration systems, access to credit and microfinance are presented and accompanied by some country cases.

6.1 CONSTITUTIONS, POLICIES AND LAWS

Repeal discriminatory legislation and developing and reforming national constitutions, policies and laws in a gender-responsive manner is an extremely important aspect of increasing women's access to land and improving women's conditions overall. The presence of gender-responsive constitutional, policy and legal frameworks at the national level is the most important condition for the sustainable improvement of women's conditions, including in the land sector. As this applies equally to Muslim-majority countries and other countries, this report does not go into a detailed analysis of this topic, but the reader should not be misled by the length of this module and underestimate the importance of its subject.

Not all countries have written constitutions, but, where they exist, national constitutions outline the fundamental principles by

which a state is governed and on which national policies and laws related to land are built. Gender responsive constitutions are not sufficient to advance the conditions of women, but a strong constitutional emphasis on gender equality and promotion of women's participation in public and economic life of the country, for instance, can significantly contribute to the trickling down of such principles to policies and laws, including land-related ones.

The European Union defines a land policy as one aimed at achieving "certain objectives relating to the security and distribution of land rights, land use and land management, and access to land, including the forms of tenure under which it is held."¹¹⁷ It defines the principles and rules governing property rights over land and the natural resources it bears, as well as the legal methods of access and use, and validation and transfer of these rights. It details the conditions under which land use and development can take place, its administration, i.e. how the rules and procedures are defined and put into practice, the means by which these rights are ratified and administered, and

¹¹⁷ "European Union Land Policy Guidelines: Guidelines for support to land policy design and land policy reform processes in developing countries". (2004).

how information about land holdings is managed. Land policy is contained in texts issued by governments and also “specifies the structures in charge of implementing legislation, land management and arbitration of conflicts”.

While it is very important that countries develop gender responsive and inclusive land policies, realistic expectations should be set when embarking on such processes, as they are lengthy and require significant human, political and financial resources to be sustained and to get positive results. It is not uncommon for such processes to take between five and ten years. International legislation and frameworks can help to model national ones in terms of content and guiding principles. Successful constitution, policy and law reform processes are inclusive, they benefit from the participation of different types of actors (e.g. government, civil society, private sector, academia, land professionals, etc.) and include women and women’s groups at all steps of the process.¹¹⁸

A reform process that excludes women from the development phase is almost certainly going to exclude women from the benefits of its implementation. Implementation aspects (costs, capacity required, institutional infrastructure needed, etc.) have to be factored in from the beginning of the processes, to ensure that the intentions of the reformed frameworks actually translate into practical improvements in women’s and men’s conditions, with particular attention to the most vulnerable ones.

It is widely demonstrated that “gender neutral” laws and policies do not benefit women and men equally. This is because gender neutral approaches ignore the cultural and practical constraints women face in obtaining land rights, resulting in *de facto* negative discrimination against them. More proactive efforts to ensure that women actually benefit from equitable land reforms need to be made, including through affirmative action for women, gender quotas, increasing women’s representation in all processes, establishing systems of checks and balances, and carefully monitoring the results and impact of policies and laws on women. The types of challenges encountered in the implementation of land reforms globally can also be encountered in Muslim-majority countries.

Land policies are “further developed through legislation, decrees, rules and regulations governing the operation of institutions established for the purposes of land administration, the management of land rights, and land-use planning. To be effective, land policies must propose a practical and coherent set of rules, institutions and tools, which are considered both legitimate and legal, and are appropriate for different context and interest groups”.¹¹⁹ As noted for the constitutional reforms and illustrated in the Tunisia case, however, gender-responsive changes in land policy or legislation are important but not sufficient to improve women’s access to land; concerted efforts at different levels are needed. Awareness raising, education and

capacity building on constitutions, policies and legislative frameworks in place are needed for the diverse range of actors that have a stake in the land sector.

6.2 LAND ADMINISTRATION

While the constitution, the policies and the laws give the overall direction of how land should be governed and managed, land administration sits within such frameworks and translates them into practice. “A land administration system provides a government with an infrastructure for securing land tenure rights, determining valuation and taxation of land, and managing the use of land and land development. It sits within the principles of responsible land governance and the overall framework of national land policies.”¹²⁰ Land administration also helps to reduce land disputes, protects public land, facilitates land reform, improves urban planning and infrastructure development, supports the protection of the environment and produces data which can be used to steer decision making. In countries where legal pluralism exists, such as in many Muslim-majority countries, some land administration functions are carried out by customary or religious institutions.

Overall conditions for gender-responsive land administration

Women face many difficulties in dealing with conventional land administration processes. These processes are generally

“gender neutral” and therefore they ignore practical and cultural constraints that women face in undertaking them. Land administration is generally excessively bureaucratic, time consuming and costly, all aspects that particularly affect women, the poor and disadvantaged groups, and *de facto* negatively discriminating against them. Further, women’s representation in land administration offices and related disciplines is extremely low, both globally and in Muslim countries; this renders such processes less gender-friendly and less accessible by women.

As described in the conceptual frameworks section of the introduction to this report, the adoption of fit-for-purpose land administration approaches¹²¹ by Muslim countries is considered to be a crucial step for improving women’s access to land and housing, if coupled with the commitment to promote women’s land rights. Fit-for-purpose land administration systems are simple and basic, can be set up within a relatively short timeframe and use a flexible and affordable approach to identify the way land is occupied and used - whether these land rights are legal or locally legitimate. The systems are set up to meet immediate land administration needs of the society and can be incrementally improved over time to include additional functions. A comprehensive description of fit-for-purpose land administration is beyond the scope of this report, but it is recommended that countries intending to

118 “How to Develop a Pro-Poor Land Policy: Process, guide and lessons”. Nairobi: UN-Habitat (2007).

119 “EU Land Policy Guidelines: Guidelines for support to land policy design and land policy reform processes in developing countries”. (2004).

120 “Fit-for-Purpose Land Administration: Guiding principles for country implementation” (2016). UN-Habitat, GLTN and Dutch Kadaster International.

121 “Fit-for-Purpose Land Administration” (2014). World Bank and the International Federation of Surveyors; “Fit-for-Purpose Land Administration: Guiding Principles for Country Implementation” (2016). UN-Habitat, GLTN, Dutch Kadaster International.

TUNISIA

How progressive national legislation is crucial but not sufficient to ensure women's access to land and property, especially in rural areas.

Since its independence in 1956, Tunisia has worked towards gender equality by investing in education and regulating family matters.⁰⁶⁷ Polygamy, repudiation and the concept of obedience to the husband were abolished, the minimal age for marriage was set 18 years, and family judges for mediation between spouses were institutionalized. Reforms regulated access to land and property, such as the right to remain in the marital house after divorce for the mother who has the guardianship of children, even if the house belongs to the father. Amendments to the personal status code in 1993 introduced the “joint estate regime”, whereby spouses are obliged to cooperate and contribute equal resources in the management of the household. Couples also have the right to opt for the equal division of all property acquired during the duration of the marriage.⁰⁶⁸

While separate marital property for assets acquired by the spouses during marriage is the usual regime, Tunisian law⁰⁶⁹ has created the legal possibility for spouses to draw up a framework for joint management and investment of assets acquired during the marriage. This agreement must be written in a document separate from the marriage contract, and the notary must notify the two parties of this possibility at the time of marriage.

However, this system is not compulsory and it depends on the will of both spouses.⁰⁷⁰ Like in Morocco, however, Tunisian brides seldom have the real option of considering community property regimes as there is no opportunity to study the contract in marriages conducted by the registrar, which are mostly held either in the bride's parent's home or at the mosque, and she is only given the completed document to sign.

Tunisia lifted all the reservations to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women in 2011⁰⁷¹ and, in 2014, adopted a new and very progressive constitution with a large majority. The document is particularly significant for Tunisian women as its provisions assure women's equality, it explicitly commits to eliminating violence against women, promotes women's assumption of positions of responsibility in all sectors, and makes provisions for the achievement of parity in all elected bodies in the country.

Participation by Tunisian women in social and economic life, however, is low⁰⁷² and access to land and property is limited. As inheritance is the primary means of acquiring land rights in Tunisia, discriminatory succession norms have a particularly strong impact on property and land access for women. A village-level study in the Sidi Bou-Zid region found that inheritance accounted for over 70 per cent of land acquisitions in most villages studied, and in some cases for 100 per cent (e.g. in *Mliket*).

The study also revealed that customary rules excluding women from inheritance are followed in rural areas. When women marry outside the clan, they do not claim their statutory inheritance rights over land. Women, especially in rural areas, often renounce their inheritance rights in favour of male relatives to “keep land within the family”⁰⁷³ and because it is seen as inappropriate and an offence to male family members if women claim their rights to land.⁰⁷⁴

Particular efforts will have to be made to change patriarchal attitudes and social norms regulating aspects of family life, such as inheritance, especially in rural areas. This is a challenge that is difficult to tackle as it requires holistic interventions that go

beyond changes at the constitutional and policy levels alone, and requires a combined set of short-, medium- and long-term interventions.

The progressive constitution and national legislation are important for creating an enabling environment for women to claim and enjoy their rights, but such efforts need to be accompanied by complementary interventions and initiatives to realize their full transformative potential. Nevertheless, Tunisia is an inspirational example of change, and sets the scene for a more equal and gender friendly future for women in the Arab region and Muslim world overall.

067 *‘L’Approche Genre en Tunisie: Consolidation de l’Égalité entre les Hommes et les Femmes’, Imen Zahouani Lahouimel, Directrice Générale des Affaires de la Femme et de la Famille, 4ème Réunion de la Commission de l’égalité entre les femmes et les hommes, Conseil de l’Europe, 13 – 15 Novembre 2013, Strasbourg.*

068 *“Gender equality in Tunisia: Social institutions and Gender Index (SIGI)”.*

069 *Joint property regime for spouses as in law no 98-94, 9 November 1998.*

070 *“Euromed Gender Equality, National Situation Analysis Report: Women’s Human Rights and Gender Equality in Tunisia” (2010).*

071 *“Council of Europe, Neighbourhood Co-operation Priorities for Tunisia” (2012-2014).*

072 *“Gender Equality and Development in the Middle East and North Africa: Region, capabilities, opportunities and participation”.* (2011).

073 *“Gender equality in Tunisia; Social Institutions and Gender Index (SIGI).”*

074 *“Gender and Law, Women’s Rights in Agriculture”. Rome: Food and Agriculture Organization.*

make land administration improvements or reforms study them carefully. Careful costing and analysis of how to finance land administration services needs to be done, with the support of available tools.¹²²

In its gender guidelines,¹²³ the International Federation of Surveyors articulates the key tasks to consider for gender-inclusive land administration: establish land administration institutions that are responsive and accommodating to women and men; set up efficient, decentralized land administration agencies; simplify registration procedures, as women, especially the most vulnerable, are often unable to comply with excessive documentation requirements; refrain or consider carefully the introduction of procedures requiring financial compensation, as women often have limited access to financial resources; support women's employment in land administration organizations (introducing quotas); ensure access to information for all; broaden land professionals and practitioners' understanding and appreciation of what limits women's participation in land-related matters and find means to include them in those decisions and processes; work with local communities and customary (and religious) institutions.

122 *“Costing and Financing of Land Administration Services: Prioritizing service delivery options on a cost basis” (2017). Policy brief by GLTN, UN-Habitat, FIG; the Costing and Financing Land Administration Services tool is a decision-support tool. It assists policy-makers and land administrators to adopt appropriate technologies and methodologies for land administration services more efficiently, cost effectively and with options most appropriately tailored to national and sub-national contexts.*

123 *“Women's Access to Land: Principles for equitable gender inclusion in land administration”. FIG Publication No. 24.*

UNITED ARAB EMIRATES⁰⁷⁵

How land administration services can be designed to respond to women's specific cultural needs

Dubai is one of the Emirates in the United Arab Emirates (UAE). It has a booming real estate sector and a rental market that attracts investors from around the world. The Dubai Land Department has a specific service for women called *Al Mahara*, which is designed to cater to women's needs in UAE culture.

A woman can fully access all the Dubai Land Department services and maintain her privacy at the same time; she does not have to visit the Dubai Land Department offices to use their land administration services and there is a direct phone line that can be used to speak to a dedicated *Al Mahara* representative. She can also be picked up from any point in Dubai by car to facilitate her access and use of the services. Further, she can get advice and support from *Al Mahara* on any real estate investment and any of the services available.

Since its establishment in 2015, *Al Mahara* has been used extensively: 136,723 women investors have undertaken 316,986 real estate transactions. *Al Mahara* also keeps gender-disaggregated information on the land transactions and supports women to participate in local and international events. Although it is designed to service well-off women, *Al Mahara* addresses some of the challenges faced by women in other contexts: limited mobility, the need for privacy, the need for dedicated communication and information channels, and the need for specific advice on land administration and land transactions.



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⁰⁷⁵ www.dubailand.gov.ae. Accessed June 2017.



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The land administration functions should be simplified, decentralized on the basis of subsidiarity, and harmonized. Statutory institutions should be linked with customary and religious “institutions” and processes where needed, to ensure that they are aligned and support each other, instead of creating confusions and overlaps (see also section 2.6). The mandates and procedures of land administration institutions should be made clear and simple, protocols should be standardized, local languages should be used.

Different sources emphasize the importance of removing practical barriers to women accessing land administration services, including dispute-resolution mechanisms (e.g. travel to main urban centres, language and literacy, childcare, the need to be accompanied by a man, etc.). Lack of personal documentation,

such as birth certificates, personal identity documents and marriage certificates, is often an obstacle. Mobile local courts and registration offices issuing basic legal documentation (such as marriage, birth and death certificates) or lodging cases in the formal court systems could be considered in countries where the availability of land and land-related administration services is very low.¹²⁴ The establishment of integrated and specialized services, such as one-stop land offices where all land services are under one roof, reducing the number of steps needed, is a good way to help women overcome the institutional and social barriers of accessing justice and get involved in land administration. Women working at front

¹²⁴ *The Food and Agriculture Organization and others.*

desks and in other departments of land administration institutions also helps.¹²⁵

Capacities in land administration also need to be further developed, both on the technical side to take full advantage of the new technological developments in open source software, the use of participatory and crowd sourcing approaches, and use of low-cost spatial data gathering methods, as well as on the “soft capacities” side, such as client orientation, communication and collaboration skills. All these recommendations have both a general application and an application in Muslim-majority countries.

Land reforms

Land reform is one of the possible avenues to address systemic problems and historical injustices related to land ownership, joint ownership or rights of use to the equal benefit of both women and men. Many of the land reforms initiated across the Middle East in recent decades, for instance, did not achieve much by way of redistribution, and certainly bypassed most women. In fact, the changing patterns of the economy – the shift from sharecropping to mechanized forms of production, as well as urbanization – consolidated land in the possession of men.¹²⁶ The main beneficiaries of Egyptian¹²⁷ land reforms in the 1950s

were rural, middle-class men and, to a lesser extent, some rural working-class men. The small number of women who gained access to land was largely confined to widows as guardians of young sons, although not divorced women in a similar position, who were moved to protest about the law's application in 1952. Equally, in Jordan, during campaigns for land registration in the 1930s¹²⁸ and 1940s, women went to the courts and the land department to complain that “land which their male relatives were trying to register in their own names had been unlawfully taken away from them; in most cases, both the department and the courts sided with the women, although this did not lead to a scaled-up revision of the process in favour of women. It is not surprising, though, that these reforms did little to enhance women's rights, as this was not their purpose.

More recently, in Pakistan, an attempt has been made in Sindh province to ensure that women benefit from land reform and redistribution processes. In the past, women had never even been registered as tenants and were therefore left out of reforms targeting landless people. They only inadvertently benefited from the ceiling on land holdings, which caused large landowners to divide their property between relatives in order to protect it.¹²⁹ In 2008, the government in Sindh province created a programme to redistribute uncultivated state land, primarily to women. Part of the success is attributed to the advocacy

125 “Governing land for women and men: a technical guide to support the achievement of responsible gender-equitable governance of land tenure” (2013). Rome: Food and Agriculture Organization.

126 Sait & Lim (2006).

127 Halem, M. (1998). “Secularism and Islamist Discourses on Modernity in Egypt and the Evolution of the Postcolonial Nation-State”. In Haddad, Y. & J. Esposito, *Islam, Gender and Social Change*, Oxford University Press.

128 Amawi, A. (1996). “Women and Property Rights in Islam”. In Sabbagh, S. *Arab Women, Between Defiance and Restraint*. New York: Olive Branch Press.

129 Sait & Lim (2006).

campaigns carried out by civil society organizations that ensured a larger number of rural women could be included in government land distribution programmes and receive economic support to develop their land.

Overall, even if not widely used yet in the Muslim world to address women land rights, land reform is a valid avenue to increase access to land and other rights for women if gender-responsive provisions are more systematically incorporated to ensure that women are not left out of land reform processes. Meaningful participation of women in the policy reform processes and in the design and implementation of land-related processes is essential to ensure the gender responsiveness of the processes and their outcomes. Gender inequality is intimately linked with women's poverty and exclusion, and with both the causes and the effect of women's exclusion from decision making. The case studies presented in this report and other relevant work¹³⁰ highlight these linkages.

Specific land administration tools and approaches

Gender considerations also need to be included in specific land administration tools and approaches.

Valuation of land and property has an important role in protecting women's rights in Muslim countries, especially in the context of inheritance. As illustrated in the

Palestine case study, valuation should be an essential step for families assessing and allocating inheritance shares; women who still opt to renounce their shares need to be aware of the value of the land or property they are renouncing, and they should request adequate compensation (monetary or other). Valuation also has a role to play in other land-related processes, such as land readjustment and consolidation, expropriation and others (see below). It is important that social, cultural and religious values and considerations related to identity and community cohesion are taken into account along with the market value of a property.¹³¹ The valuation profession needs to evolve to accurately value registered and unregistered land and properties¹³² because when land is not registered it is much harder to value, which would negatively impact the ability of women to negotiate their inheritance shares, for example in the Palestine context.

Land-based financing, including land and property taxation, is a key element of land administration and is an important tool for local administrations to sustainably provide services for the public. Taxation has a significant impact on family decisions regarding land and property and therefore has an important impact on women's access to land. Tax payment receipts, as utility payments, can prove ownership and occupation, and therefore contribute to tenure security. In this light, efficient and

131 “Governing Land for Women and Men: A technical guide to support the achievement of responsible gender-equitable governance of land tenure”, Food and Agriculture Organization (2013).

132 Link to GLTN tool – Valuation of Unregistered Land.

BANGLADESH

How poor people's and women's access to land requires organized civil society and women's movements to support the implementation of government-led land reforms

Equitable access to land has been a long struggle in Bangladesh, where agricultural and urban land is scarce and land prices are high. The constitution ensures that all citizens are equal before the law, but in this 90 per cent Muslim country, Islamic law and traditional practices govern matters of personal law, such as marriage, divorce and inheritance. It is not customary for a woman to claim her share of the family property unless it is given willingly, and women often surrender their right to property in exchange for the right to visit their parental home and seek their brothers' assistance in cases of marital conflict.

As a result, in 1996, only 3.5 per cent of agricultural land was titled in the name of a woman and fewer than 10 per cent women had their name included on any property rights documents such as land titles, certificates, leases and contracts. In rural areas, women access land almost exclusively through their relationships with male family members, such as husbands, fathers, or brothers,⁰⁷⁶ in spite of the fact that women constitute over 54 per cent of the labour force on household land.

Seventy per cent of women work as unpaid family labourers and, when subsistence and income-producing crops are lost due to frequent floods and soil erosion, they often cannot receive compensation for losses because the land is rarely registered in their names.⁰⁷⁷ Even when women have the legal documents and deeds supporting their land ownership, the control of their land holdings is still with their male relatives, and therefore their economic and social status is still lower than that of male landholders. Women's ownership of housing is only slightly higher than their ownership of agricultural land, and women are more likely to own the homestead if it is not attached to cultivable land.

Land reforms carried in the 1950s, 1960s and 1970s paid a lot of attention to equity and agricultural productivity, achieving some redistribution of land to the landless. In the 1980s, the government launched a programme to distribute state-owned land, known as *khas* land, to landless families. The programme led to the redistribution of 40 per cent of the available land over a period of two and a half years - almost 17,000 acres - to the benefit of over 167,000 landless people, and joint ownership was provided for spouses,⁰⁷⁸ Vulnerable women were also prioritized for land allocation. However, getting access to the land allocation schemes, retaining control of the allocated land and getting land rights recognized was still a struggle, especially for vulnerable households.

To address these issues, 300 local NGOs, including organizations for peasants and landless people, formed the Association for Land Reform and Development (ALRD) to work on issues relating to land rights, rights to food and livelihoods, and the rights of Indigenous Peoples.⁰⁷⁹ ALRD took several approaches, including: (1) advocacy for agrarian reform through seminars, workshops, media campaigns, research publications; (2) establishing a cooperation with the government's Ministry of Land Reform to implement reforms; (3) mobilizing organizations and linking grassroots with other sectors (one current focus is to develop the capacity of newly elected women union council members and councils as a whole to establish the rights of women to own land); and (4) documenting and information disseminating, such as the well-known journal, *LAND*, produced by practitioners and development and research

activists. ALRD also brought together a group of journalists from the country's leading newspapers to investigate the attacks on vulnerable people's households, including harassment, torture and killings aimed at removing them from their land. ALRD also provided legal aid to women so they could fight systemic corruption in the local land administration and hold local elites accountable through court processes. The successful case of Beel Kuralia documents how landless people succeeded and kept the land under their possession. The landless women's movement, in particular, set an example for women's socioeconomic empowerment as well as for the successful implementation of the *Khas* Land Management and Distribution Policy.

Another successful example of civil society mobilization for the protection of women land rights is the Madaripur Legal Aid Association (MLAA). It aims to create a network of informed Muslim women leaders who can address gender equity issues and property inheritance rights. MLAA has developed a unified network of women leaders from grassroots women's groups, with which it provides information and logistical support for the promotion of women's rights. MLAA conducted a field survey to assess awareness of property and inheritance rights and Muslim inheritance law among local women and the results were used to develop informational materials. About 300 leaders have been trained and 10,000 women informed of their rights. MLAA takes socioeconomic factors into account, such as when it had to take low literacy rates in target areas into account in its work to build networks of women leaders in local villages. According to MLAA, only about 32 per cent of rural women in Bangladesh are literate, making the distribution of written materials difficult.

In conclusion, even when gender-sensitive land reform processes are established, their enforcement is far from being guaranteed, particularly for vulnerable populations and women, and the active involvement of civil society organizations is crucial to ensure that the intended beneficiaries benefit from the schemes and that the gains made are not lost over time. For the most vulnerable, including the poor and the women, property-grabbing and disinheritance are dangers to be protected from through collaborative action. Mobilization of women leaders is key to achieving change or to protect the achievements made.

⁰⁷⁶ GOB 1972; Kamal 1988; ADB 2004a; World Bank 2008a.

⁰⁷⁷ ADB 2004a.

⁰⁷⁸ Sourav, M. R. I. (2015). *Unjust Land Right of Women in Bangladesh*. In *International Research Journal of Interdisciplinary & Multidisciplinary Studies*, vol 1, No 3, pp 5-13.

⁰⁷⁹ ILC (2009) and <http://alrd.org/index.php>



SENEGAL

How women's education and political representation is linked to access to land and productive resources. The importance of inheritance and allocation of land by rural councils is highlighted, as well as the need to develop the understanding and capacity of local leaders and administrations in a context of decentralization.

A 90 per cent Muslim country, Senegal is considered to be one of the most stable countries in Africa, with good rule of law records and a democratic tradition. Female literacy, though, is a serious concern with less than 40 per cent literacy among women aged 15 years and above. On the other hand, Senegalese women are highly involved in economic life, with an employment rate of about 66 per cent, particularly in agriculture.⁰⁸⁰ Senegal legal tradition is inspired by the French civil code.⁰⁸¹ Under the Senegalese constitution and laws, women and men have equal property rights with regard to land ownership. Women are legally entitled to acquire and own land independently of their husband or male relatives, and to retain ownership and control over their own property after marriage.

As in many other Muslim-majority countries, the default marital property regime for civil marriages is the separation of property (Family Code, Art. 368), and it is the original owner who legally administers the property during the marriage (Art. 380). However, the man is legally the head of the household and so has greater access to agricultural inputs and, more generally, land and other resources. In addition, where the dowry system of marriage (Art. 385) applies, any property, savings, animals and other assets given to the woman upon marriage are to be handed over to her husband.⁰⁸² Overall, land and property arrangements for married couples seem to have opportunities for improvement and the option of joint marital property would benefit that.

Further, in a country of many ethnicities and diverse land uses – from agricultural to pastoralist – traditional practices consistently overlook women's decision-making over land. According to the agricultural census of the late 1990s, only 9 per cent of agricultural holders are women, versus 91 per cent of men. Women's very weak representation in decision-making bodies seems to be one of the key causes of such inequalities. Rural councils are composed of elected councillors mostly made up of customary landowners⁰⁸³ and councils are the deliberative bodies of the rural communities that also look into land and spatial planning aspects, among other issues.

Although women are entitled to occupy official positions in these bodies, the number of women doing so is still only around 11 per cent only. At the higher levels the situation is much worse, with only three female village chiefs in over 14,000 villages. Women's presence in municipal councils is around 27 per cent, while women mayors are less than 6 per cent of the total.

A study⁰⁸⁴ carried out in 2009-2011 shows that land is accessed by women and men in three ways: inheritance, allocation (by rural councils) and purchase. The majority of men – over 65 per cent - acquire land through inheritance; 25 per cent of them receive land through allocation, while less than 5 per cent purchase it. On the other hand, only 15 per cent of women inherit land, approximately the same percentage receives land through allocation (often collectively through women's groups to which rural councils generally allocate small plots), while purchasing does not seem to be an option at all.

However, positive developments are also being seen. In 1964, most of Senegal's rural land was nationalized; in 1996, as part of the country's decentralization process, rural councils were given the authority to manage and allocate this nationally held land. By bringing decision-making close to the citizens, an opportunity for women to have greater access to natural resources, and more of a say in managing them, was provided. Government and civil society organizations recognized that gender-responsive constitutional and legal frameworks are necessary but are not sufficient to ensure the implementation of gender-responsive practices by themselves.

Awareness-raising and popularization of legal instruments and administrative practices are recognized as being important by the government, and government campaigns were set up to encourage leaders in rural communities to ensure that state laws are respected. The Senegalese Ministry of Justice created a website⁰⁸⁵ to explain to the public civil laws issues, including marriage, divorce, inheritance, etc. Brochures, administrative forms and standard letters to courts can be downloaded from the website. In addition, the vibrancy of Senegalese civil society actively advocates for women's empowerment. In June 2013, a group of Senegalese NGOs with the coordination of the Association of Senegalese Female Jurists published a shadow CEDAW report calling for parity in participation in municipal, rural and regional councils; expansion of female entrepreneurship training, participatory and gender sensitive budget, and leadership; and the strengthening of formal and non-formal education.

These multi-sectoral efforts to advance women's conditions and their access to land and property, in a context where national legislation and constitutions are supportive of women's equality, it is likely to start bringing about positive change if women's representation and their level of education increases.

⁰⁸⁰ WEF, *Gender Gap Index, Senegal*.

⁰⁸¹ Camara, F. K. (2011). "Introduction au Droit Civil, Les Sources de la Règle de Droit". Université de Dakar.

⁰⁸² OECD, *SIGI Senegal*.

⁰⁸³ Committee on the Elimination of Discrimination against Women, *Reports submitted by states parties under article 18 of the Convention, Senegal (2013)*.

⁰⁸⁴ PRONAT, E. and pour le Développement Intégré, R.A., 2012. *Rapport technique final (31 juillet 2009-31 décembre 2011) / Projet de recherche-action participative: "amélioration et sécurisation de l'accès des femmes au foncier au Sénégal"*

⁰⁸⁵ <http://justicedeproximite.sn/>

sustainable tax collection mechanisms do not only contribute to functioning local administrations but also strengthen women's and men's access to land. From a broader perspective, it is also important that tax policies are conscious and informed by gender responsiveness concerns, such as tax exemptions or reductions for properties owned or jointly owned by women, incremental taxation, etc.¹³³ Similar experiments have been introduced with some success in several Muslim countries.

Land-use planning is another important process that needs to include women, to consciously look at how women use and manage land, and to take care to ensure the protection of women's land rights. In many countries, women and men use land in different ways, so equitable governance of land tenure requires gender-sensitive land-use planning.¹³⁴

Land monitoring has the crucial function of providing decision makers and land professionals with an accurate picture of the level of enjoyment of land rights by women and gender-disaggregated land-use patterns. Collection, analysis and dissemination of gender-disaggregated data in all land administration institutions and projects, including on personnel, needs to be pursued by every country, and is also in line with the recently established Sustainable Development Goals and their monitoring framework. Gender disaggregation needs

¹³³ Reference to GLTN tool "Innovative Land and Property Taxation".

¹³⁴ "Governing Land for Women and Men: A technical guide to support the achievement of responsible gender-equitable governance of land tenure", (2013). Food and Agriculture Organization.

to be built into the design and setting up of land information systems and databases. The case study of the UAE demonstrates that this can be done in Muslim contexts.

Gender-responsive land consolidation and land readjustment have an important function in advancing women's land rights in the Muslim world. The establishment of functioning land consolidation and land readjustment mechanisms in Muslim countries is also particularly important because the exclusion of women from inheritance is often defended with arguments linked to the prevention of land fragmentation and its negative consequences. Severe land fragmentation in many Muslim countries has been well documented. Though land fragmentation in urban and rural areas is a challenge faced by all societies, Muslim countries share additional common causes for land fragmentation, including compulsory Islamic inheritance rules, overlapping land tenure systems and community land-use patterns.¹³⁵ Land consolidation projects in some Muslim-majority countries have had been partly undermined by perceptions that the measures somehow circumvent Islamic law and destabilize Muslim socio-economic order; on the other hand, there are examples of land consolidation practices in Muslim countries (e.g. Egypt, Iran, Jordan, Pakistan and Indonesia) and support the argument that universal and professional interventions are supported by Muslim conceptions and can be effective and innovative. Further, land consolidation and land readjustment could

¹³⁵ Sait, S. & O. Tempra (2015). *Land Fragmentation in Muslim Communities: Traditional challenges and innovative consolidation approaches*.

potentially benefit from land consolidation tools derived from customary or Islamic land law, such as pre-emption (*shufa*), which gives priority to the co-owner, co-sharer or neighbour to purchase land.

Transparency in land administration is an important factor that has implications for women's access to land¹³⁶ as corrupted practices erode the land rights of the most vulnerable and those less able to afford paying "extra" to access their land rights. Further, when land administration is opaque, it is difficult to know who is responsible for what, the steps, the time and the costs required to process transactions, means and routes of appeal in the event that decisions are unfavourable. Such lack of clarity affects women disproportionately.

6.3 ACCESS TO CREDIT AND MICROFINANCE

As with women in other parts of the world, in the Muslim world one of the bigger obstacles preventing women's access to land, property and housing is a lack of the financial means necessary to purchase them. This is the result of wider causes: unemployment, low formal employment rates - many women work in the informal sector or as "invisible labourers" in family businesses or at home - the smaller salaries received by women compared to those paid to men employed in similar positions and, last but not least, the difficulties in accessing credit. A comprehensive analysis of how

¹³⁶ "Training package: Toolkit - Tools to Support Transparency in Land Administration" (2013). GLTN, UN-Habitat, ITC.

to improve women's access to finance as a means to accessing land and housing is beyond the scope of this module, but many positive experiences undertaken by women in Muslim contexts have been documented.

The socio-economic impact of cooperatives for promoting and strengthening women's access to land and its use in production, consumption and sustenance also needs to be recognized.¹³⁷ Cooperatives can play an important role in increasing women's land ownership and accessibility by providing solutions to a lack of funds to purchase property, accessibility to financing, the ability to rent and manage property or land for agricultural production and the ability to market the produce or invest in the property. Issues of poverty alleviation, employment, income generation, food security, social inclusion and empowerment can thus be resolved along with access to land by providing credit and financial services with minimal interest rates, or even no interest at all, as in the case of revolving funds and other complementary services (e.g. employment, provision of marketing services and means to overcoming local barriers in accessing markets, capacity development, etc.). Governments should encourage the formation of women's cooperatives and increase the cooperatives' access funds, soft loans, rotating funds and markets.

¹³⁷ The United Nations recognized the cooperative movement as an important partner in the implementation of the United Nations Development Agenda, defined by the United Nations global conferences and summits since the 1990s. The 1995 World Summit for Social Development in Copenhagen underscored the importance of cooperatives in a people-centered approach to development.

ISLAMIC FINANCE AND WOMEN'S PROPERTY RIGHTS

A well-functioning financial system is vital for economic growth and access to land, particularly for disadvantaged categories such as the poor, women, youth and minorities. The correlation between enhancing access to finance and strengthening of housing, land and property rights is well known. According to data from 148 countries, especially in developing economies, women on average are 20 per cent less likely than men to have a formal bank account.⁰⁸⁶ A staggering statistic is that about 72 per cent of people living in Muslim-majority countries do not use conventional banking systems,⁰⁸⁷ which paints a dire picture of Muslim women's access to conventional finance. The main reasons for this are financial illiteracy, obstacles to female participation and a general distrust of interest-based conventional finance which is seen as being un-Islamic. Thus, informal and alternative land finance in Muslim communities is extensive and needs closer consideration, and interventions need to be adapted.

Most Muslim countries have a dual financial system where both conventional and Islamic finance co-exist. Exceptions are Iran and Sudan, where only Islamic finance prevails. Since the global financial crisis of 2008, Islamic finance has seen an annual growth globally of 15-20 per cent reaching an estimated USD 2 trillion in the size of assets, and expanding into new Muslim and non-Muslim countries. Islamic finance is referred to as ethical finance owing to distinctive features such as prohibition of interest (*riba*), gambling (*maysir*) or excessive uncertainty (*gharar*) as well as investments in immoral, exploitative or proscribed ventures. Moreover, characteristics such as profit-sharing and participative finance render it well suited to land finance and development. Islamic finance has the potential to foster financial inclusion⁰⁸⁸ and augment women's access to land and property.⁰⁸⁹ Islamic finance has demonstrated innovative gender equal private revenue streams as well as public funding, through *sukuk* (Islamic bonds).

In recent years, increased female entrepreneurship, innovative products and services and diverse financial offerings have enhanced financial inclusion and improved female access to land for Muslim women. Ninety-seven per cent of Bangladesh's Grameen Bank borrowers are women -over 8 million people. For poor Muslim women, interest-based and Islamic microcredit, *takaful* (Islamic insurance), and *zakat* (alms) are vital funding sources for the alleviation of poverty, for livelihoods and for access to land. One of the challenges is to link innovative customary land tenure models and financial flows toward enhancing women's access to property. For example, financing through *waqf* (religious endowments) land plays a part in strengthening property rights for all. As Islamic finance is expanding faster in most Muslim countries than conventional finance, an urgent endeavour is to explore how it could be harnessed to strengthen women's access to land.

086 The Global Findex Database (2014) Bill & Melinda Gates Foundation

087 Honohan, Patrick. 2007. "Cross-Country Variations in Household Access to Financial Services." Presented at the World Bank Conference on Access to Finance, Washington, D.C., 15 March.

088 Z. Mohieldin, Mahmoud, Zamir Iqbal, Ahmed Rostom, and Xiaochen Fu. 2011. "The Role of Islamic Finance in Enhancing Financial Inclusion in Organization of Islamic Cooperation Countries." Policy Research Working Paper 4435, World Bank, Washington, DC.

089 Sait, Siraj (2015), *Empower Women, Empower Islamic Finance: Financial Inclusion and Women's Participation in Simply Sharia*, Human Capital Challenge: Shaping the Future, London: 2015

Further, the role of Islamic credit and microfinance in empowering women and men to achieve their life goals, including accessing land and housing, has been crucial. A comprehensive description of the topic can be found in Sait and Lim's *Land Law and Islam: Property and human rights in the Muslim world*.

6.4 RECOMMENDATIONS

Reforms of the legal and administrative frameworks are required to level the playing field for Muslim and non-Muslim women and their access to land. The recommendations are:

1. Develop and reform national constitutions, policies and laws in a gender-responsive manner, through inclusive processes in which women and men participate. The explicit inclusion of affirmative actions and provisions to increase women's access to land is required.
2. Repeal discriminatory legislation.
3. Translate constitutions, policies and laws into gender-responsive land administration systems that are less bureaucratic, faster, cheaper and do not require excessive documentation (fit-for-purpose land administration).
4. Remove practical barriers preventing women from accessing land administration services (e.g. the need to travel to main urban centres, language and literacy, childcare, the need to be accompanied by a man, etc.). Establish decentralized land administration offices, mobile services, dedicated services for women.
5. Simplify, popularize, translate documents into local languages and disseminate information on laws and procedures.
6. Support women's employment in land administration functions and organizations.
7. Develop the land administration systems and the capacities of its personnel, both on the technical side to take full advantage of the new technological developments in terms of open source software, use of participatory and crowd sourcing approaches, and use of low-cost spatial data gathering methods, and on the "soft capacities" side, such as client orientation, communication and collaboration skills.
8. Make specific land administration tools and approaches more gender responsive and explicitly targeting women's needs, including: valuation, land-based financing, land-use planning, land monitoring, land consolidation and land readjustment, etc.
9. Promote transparency in land administration.
10. Increase access to credit and microfinance for women, including through Islamic financing and through the establishment and promotion of cooperatives.



7

DISPLACED WOMEN: FOCUSING ON THEIR ACCESS TO LAND

THIS MODULE DOES not give an exhaustive analysis of women's conditions in displacement contexts and how to address them, but rather provides a short overview of the challenges and a set of recommendations based on approaches that have proved to be successful at increasing displaced women's access to land.

7.1 THE NEED FOR A SPECIFIC FOCUS ON DISPLACED WOMEN

Accessing land and housing while displaced is challenging for everyone. For women, things are even harder as conflict and displacement exacerbate existing inequalities, gender discriminations and practical challenges. Displaced women and women living in conflict-affected contexts are among the most vulnerable, and in relation to their access to land, housing and property. Their HLP rights are violated by the parties to the conflict, at times by their national laws, and by their own communities and families. They face multiple discriminations: as women, as refugees or IDPs, as members of economically disadvantaged groups and as members of ethnic and or religious minorities. These layers of discrimination also limit the ability to access justice,¹³⁸ travel to

courts and pay for the hearings. Loss or the inability to access civil documentation, legal stay issues and statelessness also constrain access to land.

Protecting women's HLP rights in displacement and conflict contexts is extremely challenging, but equally important. In the urgency of intervening in emergency situations, humanitarian actors often do not pay sufficient attention to housing, land and property rights interventions. Access to land and housing, instead, significantly helps women to survive displacement by reducing exposure to physical violence and other rights' violations, getting out of the protracted humanitarian vulnerability, and starting the journey towards recovery and self-reliance.

Increasing women's access to land in conflict-affected contexts also offers the potential for women's empowerment. In spite of the extremely harsh conditions that women have to endure, conflicts also offer opportunities for change. Institutions can be rebuilt, gender roles challenged and women can take up non-traditional roles, often becoming the sole provider for the household by assuming men's functions. The absence from their communities forces women into decision-making roles inside and outside of the home. Women who have been displaced are often exposed to

¹³⁸ "Life Can Change: Securing housing, land and property rights for displaced women", (2014) NRC.

diverse ways of living and they learn new habits, customs, beliefs and ways of doing things, which enriches and diversifies their society and can lead to improved conditions for women, including their access to land.

7.2 WHAT TO DO

To secure displaced women's access to land and housing, there is the need to **look holistically at the different tenure options** presented in this module or that exist in the specific displacement context, assess which ones are more practical, that have the potential to reach a greater number of women, can be made available in less time with simplified rules and procedures at limited cost, and assess which ones offer a higher level of protection from eviction and other hazards.

The avenues and considerations to secure displaced women's access to land are not intrinsically different from those for women and men in other contexts, except perhaps in refugee camps. However, **more attention needs to be given to appraising and mitigating the risks** that have a particular negative effect on the enjoyment of HLP rights for women living in displacement.

Refugee and IDP camps currently host a large number of the displaced population, including women who need particular support to safely reach these locations and be adequately accommodated. In most cases, the populations living in camps have **collective and temporary rights of use on the land** where the camp is located. It is important that such land is not only free from natural hazards, but also free from the risk of attacks by warring parties or neighbouring

communities. The terms of the use of the land need to be carefully negotiated by the organizations or institutions establishing the camps, considering that what is designed for the short term can ultimately need to last for decades and if the terms are now well defined, risk of evictions and further displacement may occur.

However, a large number of displaced women lives outside camps. In such cases, **strengthening women's rights of use** appears to be the most feasible approach to secure women's access to land and housing, especially in the short to medium term. This includes the **removal of the legal or administrative blockages** that prevent the displaced from renting land or housing, facilitating and supporting the use of tenancy and lease agreements (as illustrated in the Lebanon case study).

A wide **range of use rights options needs to be developed** to match the immediate and foreseen needs; the most used are the already mentioned tenancy and lease agreements, the provision of land / housing in specifically designated locations and buildings (e.g. public housing schemes), the brokering of hosting agreements with the local communities, the putting in place schemes for facilitating access to land and housing in specific locations, etc.

Information and support centres to help women to find out what their different options are and how to access them needs to be established.

While strengthening women's right of use for the short and medium term, it is important to work towards **removing the legal or practical blockages that constrain**

women's access to land ownership. The situation may vary for women displaced outside their country of origin and for those who are internally displaced. The former are more likely to face legislation that does not allow foreign nationals to purchase land or houses in the host country. The removal or mitigation of such policy or legal constraints should be addressed by the countries with the support of the international community.

Access to civil documentation for displaced women is still a serious bottleneck to be addressed to ensure access to land and housing and many other services, both in the area of origin and in the location of displacement. Women may have lost their identity documents, birth and marriage certificates while fleeing their homes, or they may have never had them. Mechanisms to ensure that such documents are issued or re-issued are essential and require coordination among organizations and institutions. Accessing civil documentation for stateless women and their children is particularly difficult and concerted efforts are needed to address this.

Support women's access to justice, including through the provision of legal assistance, counselling, representation and mediation, encouraging the use of written lease agreements and removing practical and logistical barriers are also crucial aspects of the efforts to increase access to land for displaced women,¹³⁹ as described in more detail in Module 2.

As for the loss of civil documentation, the **loss of housing, land and property**

documents is a major challenge for displaced women and men. When communities are forcibly removed from their homes, they often do not have the time to collect their land and housing ownership titles, their utility bills or other documentary proof of land ownership. At times, the perpetrators of HLP violations destroy such documents on purpose, both those kept by the victims and at times also those kept by public land registries. The loss of HLP documents creates an important obstacle to return and reconstruction, and this can lengthen the period of displacement of many communities. It is therefore important to set in place mechanisms to **protect HLP documents from destruction and support women and men to retrieve them.** Such documents will facilitate the process of restitution in contexts where land and houses of displaced populations were occupied by individuals or groups who caused the evictions or who are affiliated with the evictions' perpetrators.

Retrieving existing land and housing documents is not always possible. In most cases, displaced people never had them to start with. Alternatively, community led processes that can **reconstruct the HLP rights of the displaced communities** and provide evidence for it can be put in place. The case study of Iraq, for instance, shows how a displaced Yazidi community underwent a participatory enumeration process with the support of an innovative land administration tool to record their land ownership and obtain occupancy certificates that can be upgraded over time into full land titles.

¹³⁹ Cited NRC reports.

In both cases – where HLP documents are available and when they are not - restitution of the houses and land to the displaced is a key process that needs to take place in the medium to long term, but for which **preparations need to be set up in the early stages of the crisis**. The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, known as Pinheiro Principles and introduced in Module 2, is the key international framework that provides guidance on this.

It is important to note that, not unlike the dynamics encountered in accessing land administration services in contexts not affected by conflict, women tend to be alienated from restitution processes taking place after conflict and disaster, where the combination of practical, legal, political, economic and cultural challenges already faced in times of peace are made almost impossible to overcome.¹⁴⁰ It is therefore very important that particular attention is given to **ensuring that restitution processes do not discriminate** against women.

To effectively address the housing, land and property rights of displaced women, it is also helpful to contextualize specific interventions in the broader dynamics.

The increasingly urban and protracted nature of displacement needs to be taken into consideration. Over half of the world's displaced population is currently

displaced in urban centres¹⁴¹ and when addressing the HLP rights of displaced women, the predominantly urban nature of displacement has to be taken into account to craft suitable options for accessing land and housing. For example, it might be more important to develop options that facilitate displaced people's access to existing structures and sharing arrangements with the host communities, rather than developing separate, new solutions.

HLP solutions for displaced women and men need to have an increased focus on women and to **balance the needs of the displaced and host communities**. Affordable rental housing, the opening up of serviced land and investment in infrastructure, the provision of affordable credit, the refurbishment of abandoned property, allowing extra floors on existing housing structures, the re-zoning of land for residential use, increasing population density by encouraging in-fill, subsidies for the upgrading of vacant and dilapidated housing stock, rental support grants, incremental tenure ownerships, change of use of public buildings are all some of the available options.¹⁴²

Displacement is also becoming increasingly protracted and therefore short-term solutions requiring substantial and sustained external support are falling short of providing viable answers to displaced women and men. **The viability of short-term solutions needs to be assessed against the value they**

140 "Women's Rights to Land, Housing and Property in Post-conflict situations and During Reconstruction: A Global Overview", *Land Management Series No. 9, United Nations Centre for Human Settlements (1999)*.

141 *Report of the special rapporteur on IDP's human rights, 2011 (AIHCR/19/54)*.

142 "Home Sweet Home: Housing practices and tools that support durable solutions for urban IDPs". (2015). MIT/DUSP, Displacement Research and Action Network, Norwegian Refugee Council and IDMC.



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can provide in the medium to long term, and scenarios need to be developed to assess what options would be more cost-effective and suitable over time.

Displacement needs to be recognized as both a humanitarian and a development issue, and some of the solutions and approaches that are developed for displaced populations and displaced women may also provide answers for migrants, local poor, newly urbanized communities, etc. and therefore they need to be looked at holistically.

The **land administration systems need to be reformed** to be able to adapt and respond to the faster pace of change required, especially in urban and peri-urban areas. This can include the simplification of rules and procedures for land transactions and land development.¹⁴³

143 Tuts, R. Remarks for the UNHCR 4th Thematic discussion: "Towards a global compact on refugees. Measures to be taken in pursuit of solutions", UN-Habitat, November 2017.

Land tenure arrangements and land ownership dynamics need to accompany **physical planning and area-wide interventions** to ensure that the solutions proposed are suitable and sustainable.

Land needs to be looked at from a multi-sectoral, area-based perspective in conjunction with other needs, including services and income-generating opportunities, to increase affordability and the resilience of the communities. Specific land interventions are to be integrated in broader urban management and growth strategies, in cooperation with municipal authorities, other relevant government departments and for a further institutionalization of practices.

Coordination across sectors and type of actors is needed.¹⁴⁴

144 "Home Sweet Home: Housing practices and tools that support durable solutions for urban IDPs" (2015). MIT/DUSP, Displacement Research and Action Network, Norwegian Refugee Council and IDMC



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IRAQ

How to pave the way to peace and stability by supporting the return of Yazidis in Sinjar District with the help of fit-for-purpose land administration

The Yazidi community in the Sinjar district of Iraq has experienced massive displacements in the recent decades, caused by historical injustices and by recent occupation by the so-called Islamic State of Iraq and the Levant (ISIL). Discriminatory policies dating back 40 years denied them access to ancestral land or any formal proof of ownership, and forced them to relocate to collective townships in the 1970s. The majority of Yazidis have never been issued with certificate of ownership. In 2014, the escalation of armed violence and massive destruction of homes and infrastructure led to the displacement of over 3.2 million people. Following the invasion of Sinjar, an estimated 250,000 Yazidis were forced to abandon their homes and unoccupied Yazidi settlements were systematically demolished or seized and occupied by ISIL fighters.

To deal with these complex issues and contribute to the voluntary, safe and dignified return and sustainable reintegration of Yazidis in the Sinuni sub-district of Sinjar, in 2015, the Municipality of Sinuni and Mokhtars, Ninewa and Dohuk Governorates, and the Ministry of Planning partnered with UN-Habitat, UNDP and GLTN in a project that incrementally addressed the historical discrimination against Yazidis with regard to housing, land and property rights, and the destruction of the housing caused by the conflict. The project applied a multi-dimensional approach that addressed basic services, emergency shelters, house rehabilitation and capacity development of local and national authorities.

The collection, consolidation and analysis of alternative and informal documents proving occupancy was undertaken using the Social Tenure Domain Model, a simple system that supports the collection, verification and recordation of land tenure rights in a participatory community-based manner.⁰⁹⁰ Occupancy rights were ascertained and

it was ensured that houses planned for rehabilitation had no overlapping ownership claims requiring adjudication. Surveys of on alternative property documentation were conducted with community members and local authorities at the start of the project.

Community mobilization activities were carried out in the targeted villages and, due to the high level of displacement, visits were conducted in camps to inform the beneficiaries about the project, identify households whose houses had been damaged, and conduct vulnerability assessments to refine targeting. Technical rehabilitation was conducted through local contractors and with the direct involvement of returnees on the construction. The community members and local authorities have also gained better understanding of social tenure, tenure rights, land-related conflict prevention and technical standards for house rehabilitation.

In 2017, certificates of occupancy were issued to 300 households representing the first tenure documents that that this community has been given since they settled in the area in 1970s. This has facilitated increased the voluntary, safe and dignified return of the Yazidis. Through community-led verification of claims, issuance of certificates and mapping of plots, competing claims on land are addressed peacefully and land-related conflicts are prevented. Furthermore, female-headed households, including widows and households with young pregnant women, were selected as priority beneficiaries. This has thawed the local community's patriarchal perceptions of Yazidi women, as they are now accepted as owners of the houses. Lastly, the inclusion of private businesses and beneficiaries during rehabilitation supported the local economic recovery, created employment opportunities and offered on-the-job skills trainings for returnees, thus preventing future displacements related to economic security.

Working with local authorities and local leaders on HLP rights and the development of common criteria for asserting occupancy prior to rehabilitation activities strengthened the capacity of the municipality and Mokhtars to manage and mitigate property-related grievances and arbitrate on overlapping claims, and to advocate for the social tenure approach as a solution to address the absence of land title in Sinjar vis-à-vis regional and national authorities.

The approach contributed to the prevention of conflict related to land rights by ensuring that the returnees were the real owners of the houses and that their claims were officially recognized by local authorities, thus preventing future land grabbing, forced evictions and secondary and unlawful occupations. UN-Habitat is currently working with the Ministry of Justice to ensure that such certificates are transformed into full ownership titles by following the due institutional process and the approach is upscaled in the governorate.

⁰⁹⁰ www.gltm.net/home/land-administration-and-information-2/ accessed in January 2018



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In all these measures and interventions, **explicitly targeting women** is essential to prevent humanitarian and early recovery interventions from overlooking or discriminating against women or vulnerable groups, perpetuating or reinforcing pre-existing patterns of vulnerability and disadvantage, strengthening the rights of those who are better off and more articulate while marginalizing the poor.¹⁴⁵

7.3 RECOMMENDATIONS

Displaced women's access to land and housing can be promoted by holistic approaches that do not only look at the specific needs of women, but also take

into account the increasingly urban and protracted nature of displacement, that balance the needs of the displaced and host communities, and that assess the viability of short-term solutions against the value they can provide in the medium to long term. To adequately protect displaced women and men, there is also the need to ensure adequate coordination among stakeholders, including humanitarian and development actors. Specific recommendations include:

1. Assess and identify which tenure option is more practical, can reach a greater number of women in a shorter time, with simplified rules and procedures at limited cost, while offering the necessary protection from eviction and other hazards.
2. Assess and mitigate the risks posed by the selected tenure option.
3. Focus on strengthening collective and individual rights of use.

4. Remove the legal or administrative blockages that prevent the displaced from renting land or housing; facilitate and support the use of tenancy and lease agreements.
5. Work on a range of additional short-/medium-term options: the provision of shelter in specifically designated locations and buildings, hosting agreements with the local communities, facilitation of access to land and housing in specific locations, etc.
6. Establish information and support centres to help women to find out what the different options are and how to access them.
7. Support the issuing of civil documentation, such as identity cards, marriage certificates, etc.
8. Support women's access to justice, including through the provision of legal assistance, counselling, representation and mediation, encourage the use of written lease agreements and removal of practical and logistic barriers.
9. Support the retrieval of HLP documents and reconstruct their HLP rights in the areas of origin, as a preparation for return.
10. Ensure that restitution processes do not discriminate against women.

¹⁴⁵ J.J. Telford & R. Cosgrove (2006). "Joint Evaluation of the International Response to the Indian Ocean Tsunami". London: Tsunami Evaluation Coalition.



8

PATHWAYS TO INCREASE WOMEN'S ACCESS TO LAND IN THE MUSLIM WORLD: SUMMARIZING THE RECOMMENDATIONS

THIS FINAL SECTION draws and summarizes the recommendations to increase women's access to land in the Muslim world emerged from the previous modules and the country cases presented. Some of the recommendations are not exclusively for women in the Muslim world but also apply to women living in other parts of the world. Some of the recommendations, if implemented, would also benefit men, as well as families and entire communities, further strengthening the validity and importance of the findings.

8.1 THE RECOMMENDATIONS

Women's access to land is one of the key elements leading to the full realization of human rights, social and economic development, peace and stability of women and other members of the society. This report has been written with this lens and focus, and in consideration of the fact that women's access to land should not be seen in isolation from other crucial aspects, such as women's education, empowerment, access to justice and job opportunities, rule of law, etc.

The recommended actions could be sequenced differently in different contexts. Some are for higher and broader level

interventions (country wide, multi-stakeholder and multi-year); others can be implemented by small community groups at local level in a short period and with few financial resources.

In this module, the recommendations that can be implemented in a shorter time frame, with limited resources and with the involvement of a smaller number of stakeholders are listed first. The list of recommendations progresses to identify broader and deeper changes that need to take place in a society to ensure that women's land and property rights are protected. Depending on the context and the type of actors involved, a combination of recommendations could be taken on board and organically acted on at the same time. The main areas of recommendations are:

- Advocating and raising awareness on women and land
- Learning to work in contexts with multiple legal systems
- Protecting women's land rights at the time of marriage
- Protecting women's inheritance rights
- Strengthening women's rights of use to land and housing
- Providing practical support for women and women groups

- Increasing women's access to justice and dispute-resolution mechanisms
- Focusing on solutions for displaced women
- Improving the land administration
- Reforming constitution, policy and law

Advocating and raising awareness on women and land

Advocacy and awareness are needed on different but related issues. Some of the key issues on which awareness and advocacy are required include:

1. Raise awareness nationally and internationally on the **importance of increasing women's access to land** for the broader social and economic development of the society, the realization of human rights, increased women's empowerment and participation, protection from gender-based violence and health hazards, and to stabilize societies affected by conflicts;
2. Promote the **awareness and understanding of relevant international frameworks** at the international and national levels to stimulate debate and mobilize change;
3. Raise awareness of the importance of protecting and promoting women's **inheritance rights**;
4. **Advocate against the renunciation of inheritance rights** by women and combat the negative perception of women claiming their inheritance rights;
5. **Advocate for the registration of marriages** and the use of written

6. **Promote joint registration of ownership documents** or lease / tenancy contracts in the name of husband and wife;
7. **Advocate for joint marital property** as the preferred property regime option (or the default option) for couples getting married;
8. Advocate for **gender-responsive change in customary land laws and practices**.

Learning to work in contexts with multiple legal systems

1. **Understand the plurality of legal systems** present in the context and strive to harmonize, reconcile and align them. In particular, it is important to clarify the interface between the different systems and their relevance and possible use in different circumstances to avoid forum shopping and jurisdictional confusion;
2. **Understand customary laws and practices** related to women's access to land to adequately engage with customary laws and authorities;
3. **Understand concepts and practices** to increase women's access to land in contexts where legal pluralism exists;
4. **Assess which existing legal system offers better prospects** in terms of time, scale, sustainability, level of knowledge of and acceptance by the local actors, enforcement considerations etc. When selecting the best framework as an entry point for action, humanitarian actors planning short-term interventions should think of the longer-term impact of their decision

2. Ensure that the spouses have basic identity documents, **promote the registration of marriages** and the **use of written marital contracts** and, when possible, make them compulsory;
3. Develop standard gender-responsive **templates for marriage contracts** that provide the different land and property regimes' options available from which the couple can choose and their description, and record the one chosen, the dower arrangements, define the conditions for settlement of divorce, etc.
4. **Promote the joint registration of land and housing** in the name of both spouses;
5. **Promote the joint marital property regime**;
6. **Encourage countries to include the joint marital property regimes in their legal and administrative frameworks**, if not done yet;
7. Consider setting the **joint marital property as the default option** if couples fail to explicitly indicate their preferred property regime and the marital contract does not indicate otherwise;
8. **Develop the capacities of judges, registrars and other public figures** involved in contracting marriages on how to explain and guide couples on the property regimes available and on how to adequately record land provisions in marital contracts;
9. **Develop the capacities of the judiciaries and traditional / religious dispute-resolution authorities** to understand and resolve land issues related to marriage and divorce;

Protecting women's land rights at the time of marriage

Marriage-related processes have a very important role to play in defining and improving women's access to land, housing and property. It is important to raise awareness about it, develop the capacities and understanding of key actors involved in it, and ensure that the regulatory and administrative frameworks regulating marriage are adequately developed and implemented. Specific recommendations include:

1. **Raise awareness among women, families and communities on the importance of marriage in defining land and property regimes of the family**, the importance this has for the spouses and their children, the available options in their specific context and what their implications are for the couple. This can be done through public debates and discussions involving different actors, information campaigns, information and awareness-raising materials, preparatory courses, etc.;

Protecting women's inheritance rights

Inheritance constitutes the main avenue through which women in the Muslim world can access land ownership. It is therefore very important to protect women's inheritance rights and, particularly, combat the renunciation of inheritance rights by women. Specific recommendations include:

1. **Raise awareness** among key actors to ensure that the issue of inheritance is understood, and that adequate attention is given to protecting and promoting women's inheritance rights;
2. **Develop the capacities of stakeholders** dealing with inheritance issues to better understand women's inheritance provisions under the different legal systems co-existing in their contexts. The key stakeholders include women and families as a whole, judges, religious and community leaders, and civil society and women's organizations.
3. **Align, harmonize and clarify** the interface and the ranking of different co-existing legal systems about women's inheritance rights;
4. **Promote legal and administrative reforms** to align national frameworks to international law in matters related to inheritance and women's access to land;
5. **Facilitate and support women's access to justice.** Provide information, financial aid, legal aid and practical support for women to claim their inheritance rights through courts or alternative dispute-resolution systems;
6. Promote gender equality in the **inheritance of land users' rights;**

7. **Promote a holistic view of estate planning** and promote complementary mechanisms to increase women's access land and housing to counterbalance women's lesser inheritance rights; these include the use of wills, gifts, dower, and others.
8. **Combat inheritance renunciation** and the practices of excluding female family members from inheritance, through increased awareness and access to justice, and through the introduction of a rigorous administration process to regulate requirements and steps for renunciation (including establishing clear requirements, timelines and procedures such as professional valuation of the properties of the deceased);
9. Carry out communication and information campaigns to **change the negative attitude towards women who claim their inheritance rights;**
10. **Support women's associations,** community and civil society organizations with awareness raising, capacity development and funding.

Strengthening women's rights of use to land and housing

A large proportion of women can only access land through their relationships with (male) relatives and it is therefore important to strengthen women's rights of use over land and housing to improve their tenure security in the short-to-medium term. Specific recommendations are:

1. **Analyse rights of use that are available** in a given context and how easily, quickly and sustainably they can be strengthened;

2. **Develop a better appreciation of the importance of rights of use** to increase women's access to land and provide solutions for large and rapid population movements and displacement;
3. **Improve the understanding** of how to maximize advantages and minimize the disadvantages of use rights to the benefit of different categories of women;
4. When possible, **formalize and record rights of use;**
5. **Raise awareness and acknowledge the woman's contribution to household income** and wellbeing and link such a contribution to the protection of their land and property rights and status within the household;
6. **Improve or develop lease / tenancy laws** to ensure that they provide better solutions for women and men, including the displaced, and create sustainable win-win situations between landlords and tenants;
7. **Strengthen and regulate further tenancy and lease agreements,** simplify and widen the requirements for entering into such agreements, and provide legal support and mediation for their enforcement;
8. **Promote written lease / tenancy agreements,** support communities in getting information and guidance on how to use them, ensure that accessible and fair dispute-resolution mechanisms are in place and that women are supported in accessing them;
9. **Promote the inclusion of women's (and other members of the household) names in all types of land tenure documents** (ownership, lease, occupancy, etc.);



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10. Explore and promote **communal land use** for women or women groups, especially in rural communities;
11. **Explore waqf arrangements** in specific countries as an avenue to increase vulnerable women's access to land;
12. Support arrangements for the **settlement of divorce** that include the protection of divorced women's access to housing and land;
13. Facilitate and support women's **access to justice.**

Providing practical support for women and women groups

The importance of providing practical and direct support at the grassroots level for women, women's and civil society organizations involved in supporting women's issues should not be underestimated. Some recommendations are:

1. At the local level, **establish and support women groups** and organizations that can provide information, guidance and advice on access to land and housing and other forms of support for women;
2. **Develop the capacity** of existing groups and organizations to tackle land-related issues;
3. Provide different forms of **practical support for women** who embark on processes to claim their land rights, such as support for child care while women attend court hearings or dispute-resolution sessions, travel, accompaniment by male relatives or acquaintances to enable women to access land administration services, etc;
4. **Provide shelter or a safe place** to be for women facing violence and eviction in relation to land issues.

Increasing women's access to justice and dispute-resolution mechanisms

To protect women's housing, land and property rights, it is crucial that access to justice and dispute-resolution mechanisms is provided. Specific recommendations are:

1. Mobilize adequate human, financial, legal and technical resources to have

functioning justice and dispute-resolution mechanisms;

2. **Develop the capacities** on land issues, gender responsiveness, protection of minorities, etc. of the different justice administrators and officers, including formal, religious and customary;
3. **Improve legal accessibility**, increase the legal literacy, simplification and popularization of legal texts, increase the use of local languages in legal documents, etc.;
4. **Establish alternative dispute-resolution mechanisms** when necessary;
5. Provide **access to non-confrontational land dispute-resolution mechanisms** that do not harm or put family relationships at risk;
6. In contexts where different justice and dispute-resolution mechanisms exist, **align, harmonize, clarify the interface and the ranking of different legal systems** and dispute-resolution systems;
7. Identify suitable **transitional solutions** in countries affected by conflict and having fragile institutions;
8. **Monitor and collect gender-disaggregated data** on the results achieved by different dispute-resolution mechanisms and use them to guide reforms and decision making; this includes establishing how to coordinate and support the different dispute-resolution mechanisms to avoid dispersion of resources and undermining the formal justice system;
9. Put in place a comprehensive **range of complementary interventions** to accompany formal and non-formal courts, including accessible and

affordable legal aid, legal information and counselling, legal assistance, representation and mediation, listening centres or law shops, etc.

10. Put in place different types of **practical support that facilitate women's access to justice** (e.g. financial support, dedicated local initiatives, removal of barriers to travel or to seek independent legal justice and representation in courts, etc.).
11. **Promote, strengthen and develop the capacities of women's associations** to deal with land-related and broader development and empowerment issues.

Focusing on solutions for displaced women

Specific recommendations to increase displaced women's access to land and housing include:

1. **Assess and identify** which tenure option is more practical, can reach a greater number of women in a shorter time, with simplified rules and procedures at limited cost, while offering the necessary protection from eviction and other hazards; and assess and mitigate the risks posed by the selected tenure option;
2. **Strengthen collective and individual rights of use;**
3. **Remove the legal or administrative blockages** that prevent the displaced from renting land or housing; facilitate and support the use of tenancy and lease agreements;
4. Work on a range of additional **short-/medium-term options:** the provision

of shelter in specifically designated locations and buildings, hosting agreements with the local communities, facilitation of access to land and housing in specific locations, etc.;

5. Establish **information and support centres** to help women to find out what the different options are and how to access them;
6. Support the issuing of **civil documentation**, such as identity cards, marriage certificates, etc.
7. Support women's **access to justice**, including through the provision of legal assistance, counselling, representation and mediation, encourage the use of written lease agreements and removal of practical and logistical barriers;
8. Support the **retrieval of HLP documents** and reconstruct their HLP rights in the areas of origin, as a preparation for return;
9. Ensure that restitution processes do **not discriminate against women**.

Improving the land administration

Improving the land administration systems in a gender-responsive manner is crucial to ensure women (and men) have better access to land and housing. The key recommendations, applicable to Muslim and non-Muslim majority countries, are:

1. Render land administration more **efficient, simpler, faster, cheaper** (fit-for-purpose) and overall more accessible to women.
2. **Remove practical barriers** preventing women from accessing land administration services (e.g. the need to travel to main urban centres, language

- and literacy, childcare, the need to be accompanied by a man, etc.). Establish decentralized land administration offices, mobile services, dedicated services for women, etc.
3. **Simplify, popularize, translate documents** into local languages and disseminate information on laws and procedures.
 4. **Align, harmonize, clarify the interface** and connect formal and non-formal land administration;
 5. **Support women's employment in land administration** functions and organizations.
 6. **Develop the land administration systems and the capacities of its personnel**, both on the technical side to take full advantage of the new technological developments in terms of open source software, use of participatory and crowd sourcing approaches, and use of low-cost spatial data gathering methods, and on the "soft capacities" side, such as client orientation, communication and collaboration skills.
 7. Establish **gender-disaggregated data collections** in land administration processes;
 8. Make **specific land administration tools and approaches more gender responsive** and explicitly targeting women's needs, including: valuation, land-based financing, land-use planning, land monitoring, land consolidation and land readjustment, etc.
 9. **Monitor and assess the impact of changing customary land administration practices** on women's access to land, especially in contexts significantly affected by land-related

- changes (e.g. peri-urban areas, lands that are passing from customary land administrations to formal land administrations, locations where large investments take place, etc.).
10. Ensure **transparent, inclusive and gender responsive ways of formalizing customary rights;**
 11. **Promote transparency in land administration.**
 12. **Increase access to credit and microfinance** for women, including through Islamic financing and through the establishment and promotion of cooperatives.

Reforming constitution, policy and law

Developing and reforming national constitutions, policies and laws in a gender-responsive manner is an extremely important aspect of increasing women's access to land and improving women's conditions. Equally important is to be able to work in legally pluralistic contexts. The key recommendations are:

1. **Develop and reform national constitutions, policies and laws in a gender-responsive manner**, through inclusive processes in which women and men participate and different sectors of the society are included. The explicit inclusion of affirmative actions and provisions to increase women's access to land is required;
2. **Repeal discriminatory legislation;**
3. **Promote the alignment** of national constitutions, policies and laws with international human rights frameworks through concerted efforts and political dialogue;

4. **Amend citizenship and guardianship laws** to ensure that they do not constitute obstacles to accessing land by women and their children;
5. **Avoid polarizing the discussion** on different sources of laws, but rather promote practical approaches and foster dialogue among communities or groups with the common objective of increasing women's access to land and, broadly, improving women's conditions;
6. **Increase the knowledge of Islamic land law** in contexts where it constitutes an important element of allocating housing, land and property rights; this is particularly important for people in decision-making roles, such as judges or community leaders, but also for families, communities, civil society organizations and women's groups that refer to Islamic land law in the management of their estates.



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UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME (UN-Habitat)

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THE GLOBAL LAND TOOL NETWORK (GLTN)

GLTN is an alliance of international partners committed to increasing access to land and tenure security for all, with special focus on the poor and women. The Network has an established global land partnership, drawn from international civil society organizations, international finance institutions, international research and training institutions, donors and professional bodies. GLTN develops, disseminates and implements pro-poor and gender-responsive land tools. These tools and approaches contribute to land reform, good land governance, inclusive land administration, sustainable land management, and functional land sector coordination. For more information, visit the GLTN web site at www.gltn.net.

Women and Land in the Muslim World

Pathways to increase access to land for the realization of development, peace and human rights

This publication provides practical and evidence-based guidance on how to improve women's access to land as an essential element to achieve social and economic development and enjoyment of human rights, peace and stability in the specific context of the Muslim world. The challenges faced by women living in Muslim contexts do not substantially differ from those faced by women in other parts of the world: socially prescribed gender roles, unequal power dynamics, discriminatory family practices, unequal access to justice are the most common. However, 20 per cent of the world's population is Muslim and certain land-related patterns reflecting customary and religious practices emerge as common elements that create context-specific opportunities to meet these challenges.

This publication investigates these common elements, reviews international frameworks and national laws, and analyses a wide range of country experiences. Different tenure options are compared and special attention is given to the protection of women's land rights through inheritance and at the time of marriage, when the land and property regime of the family is redefined. Legal and administrative reforms, access to justice, credit and microfinance are presented as important conditions for change. Particular emphasis is put on the protection of displaced women's land and housing rights.

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