

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.

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

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

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