

ISLAMIC PRINCIPLES AND LAND

OPPORTUNITIES FOR ENGAGEMENT



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GLOBAL
LAND
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Islamic Principles and Land: Opportunities for Engagement

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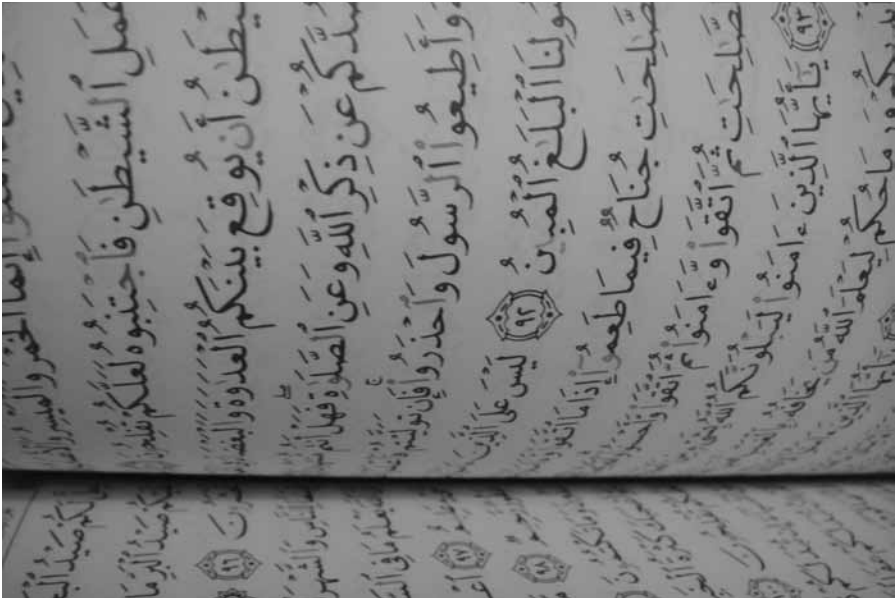
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01

BACKGROUND



Pages from the Holy Qur'an © UN-HABITAT

UN-HABITAT, as the global UN agency for sustainable human settlements, engages with different regions and diverse legal systems. During its work in many Muslim countries from Afghanistan to Indonesia, and Somalia to Iraq, UN-HABITAT has been increasingly aware of the significance of the distinctive and complex Islamic land tenure concepts and land rights.

The Global Land Tool Network (GLTN), with its secretariat at the Land Tenure and Property Administration Section, Shelter Branch, UN-HABITAT is a multi-sector and multi-stakeholder partnership focused on establishing a continuum of land rights and the creation of innovative, pro-poor, scalable and gender-sensitive land management and land tenure tools (www.gltn.net).

It achieves these overall goals through a range of activities such as promoting research and disseminating materials on land, supporting documentation of tools and best practices, developing innovative methodologies and approaches, organizing workshops and consultations, facilitating a wide range of stakeholder inputs and strengthening capacity through training. GLTN recognizes the demand for targeted tools, including culturally or religiously formatted tools, as there are many positions and approaches to conceptualizing and delivering secure tenure and access to land.

This booklet arises from GLTN's work on Islamic dimensions of land. This work began in 2004 with the commissioning of research leading to Sait and Lim's *Land, Law and Islam: Property and Human Rights in the Muslim World* (London: Zed Press/ UN-HABITAT, 2006) which was endorsed by leading non-Muslim and Muslim stakeholders, including the seat of Islamic scholarship, the Al-Azhar in Egypt. Based on this research publication, a training course on *Islamic Land, Property and Housing Rights in the Muslim World*, was produced in 2010 by GLTN in cooperation with the University of East London.

This booklet provides a short summary of the key principles and elements of Islamic dimensions of

land, as highlighted in the above two publications. It is intended for land professionals, policy makers, and any other stakeholder working in the land sector, who are looking for a short overview of these aspects of land in Muslim societies. It is intended to provide a wider understanding of how to integrate Islamic dimensions into land programmes and projects.

02

WHY ISLAMIC PRINCIPLES ARE RELEVANT TO LAND

Over 20 percent of the world's population is influenced to varying degrees by Islamic principles and practice, either through official systems or informal practices. Among other areas, Islamic principles are impacting on land and property. But despite the wide geographical spread and relevance of such principles, they are often not sufficiently documented and aligned with informal and statutory systems. This impacts land management systems as well as security of tenure across the Muslim world.

Land systems and tenure approaches around the globe rarely acknowledge that several Islamic principles potentially offer opportunities for enhancing property rights. Just as with customary and informal land rights, there is a need to better understand these approaches in order to get a more complete picture on how land is managed in different contexts.

Islamic principles and practices influence many aspects of everyday life in Muslim society. This includes the perception of property and land rights. Since Islamic principles are based on an obligation towards God and the

Muslim society as a whole, they can be influential in promoting land access and re-distribution for marginalized groups. There are also distinctive Islamic approaches to land administration, urban planning, and land-related aspects of micro-finance. Further, there are a number of instances where Islamic principles and practices relevant to land are similar to widely accepted universal approaches and can therefore be used to enhance tenure security, land use planning and land management. Understandably, traditional Islamic practices have not foreseen the extent or nature of today's intractable land issues and challenges and purely Islamic solutions may not always provide a complete and contemporary model. But there are aspects of Islamic principles, mechanisms and processes that may provide legitimacy for certain land interventions as well as durable solutions.

03

ISLAMIC LAW AS IT APPLIES TO LAND

There is no single unified and systematic field of Islamic land law. However, those working with Muslim communities recognize key features drawn from various Islamic fields relating to land. Protection of property rights in general is recognized in Islamic law (*Shari'a*) as a priority and state policy must operate to promote it. Islamic law is therefore an important factor influencing land tenure in Muslim societies. Whether or not their states 'officially' implement Islamic principles, land tenure regimes and concepts are generally constructed and realized with reference to the *Shari'a*.

Muslim countries across the regions share common values and morality but also demonstrate diversity in applying Islamic law through different methods, mechanisms and legal practices. It is, therefore, important to note that Islamic principles relevant to land are not necessarily the same throughout the Muslim world, and may vary even within countries.

In contexts where the holy *Qur'an*, one of the primary sources of Islamic law, does not provide clear instructions, *Shi'a* and *Sunni* Muslims, and their

respective jurisprudential schools, have established different methods in, for instance, the allocation of inheritance shares. This legal pluralism, particularly the intersection of Islamic, customary and statutory norms, is a feature of Muslim countries.



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KEY ELEMENTS OF ISLAMIC PRINCIPLES ON LAND

Islamic principles offer a range of rights, values, practices and methods which are relevant to land and which are still of importance in modern Muslim societies. This section introduces some key elements of these principles. For any application of these principles in land projects and programmes it will, however, be important to first identify the Islamic principles utilized in local or country context and to localize any approach building on these principles. As with any land activity development and implementation there would also be a need for consultations between representative groups of land professionals, civil society Islamic scholars, policy makers and development partners, amongst others.

LAND AND PROPERTY RIGHTS

‘use’ and ‘possess’ land. In principle, the rights to land are linked to land use and the person who uses the land has priority over another who has failed to use it. Land that is not being used can consequently not be owned. Following the same logic, only productive land should create wealth.

In Al-Madinah, Saudi Arabia the concept of linking land rights to land use was important in legitimizing large scale modern ‘squatting’. Occupiers of unused and unclaimed land built fences and/or shelters on it and viewed this as part of their legal and social tradition. This

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