

ISLAMIC PRINCIPLES AND LAND

OPPORTUNITIES FOR ENGAGEMENT



UN HABITAT



GLOBAL
LAND
TOOL
NETWORK

Islamic Principles and Land: Opportunities for Engagement

Copyright © United Nations Human Settlements Programme (UN-HABITAT), 2011

United Nations Human Settlements Programme (UN-HABITAT)

P.O. Box 30030, Nairobi 00100, Kenya

Tel: +254 20 762 3120

Fax: +254 20 762 3477

www.unhabitat.org

Disclaimer

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning delimitation of its frontiers or boundaries, or regarding its economic system or degree of development. The analysis, conclusions and recommendations of this publication do not necessarily reflect the views of the United Nations Human Settlements Programme or its Governing Council.

Cover photos © UN-HABITAT/ Britta Peters

Acknowledgements

Principal authors: Siraj Sait, Britta Peters

Contributors: Åsa Jonsson, Solomon Haile

Editing and layout: Robert Wagner, Britta Peters

Sponsors: Norwegian Government, Swedish International Development Cooperation

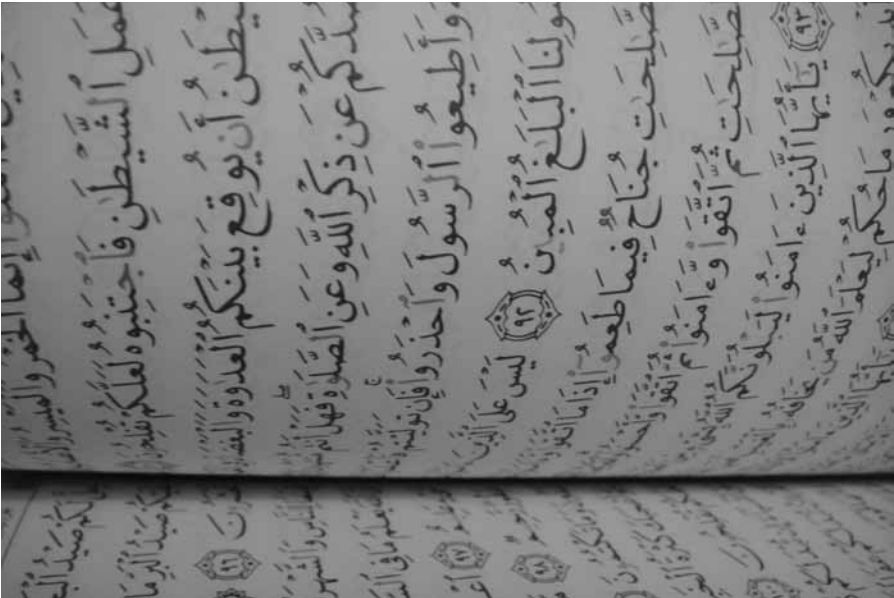
Printer: Publishing Services Section, Nairobi,
ISO 14001:2004 - certified.

CONTENT

1. Background	4
2. Why Islamic principles are relevant to land	6
3. Islamic law as it applies to land	7
4. Key elements of Islamic principles on land	8
5. How Islamic principles can be applied to land	14
6. Conclusion	21
7. Glossary	22

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.glttn.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.



04

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

There are references to land in the *Qur'an*. The *Qu'ran*, for instance, stresses the importance to respect private property rights, but makes clear that the earth belongs to God and those who enjoy the benefits are accountable to God. There is some theoretical or philosophical debate as to whether land itself can be 'owned', but little dispute that there are Islamic rights to

'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 'squatting' led, after appropriate investigations by local courts into whether the land was in fact unused, to registration of the land in the names of the occupiers.

Contemporary land tenure regimes in the Muslim world are often a complex, dynamic and overlapping net of Islamic principles, state and international legal frameworks, customary norms and informal legal rules. However, traditional principles have remained important in many countries, despite variations in their socio-cultural particularities and historical development of their land tenure practices. The term ‘Islamic land tenure’ recognizes that these tenure systems ultimately, if indirectly, have religious foundations. Nigeria, for instance, is a country with such a ‘legal pluralism’ where secular laws compete with customary (uncodified) and Islamic laws (codified).

TENURE TYPES

Four main types of land tenure emerge from Islamic legal texts and were recognized in the Ottoman Code of 1858, a codification of Islamic land principles:

- endowed land (*waqf*) which is property permanently settled for the use of beneficiaries, either for specific purposes or devoted to general welfare; and,
 - unused or dead land (*mawat*) that can be converted into private land through reclamation.
- There are other classifications of land such as unused state land liable to be confiscated (*mehlul*) as well as common land (*metruke*). Communal land (*musha*) and other forms of collective ownership are also recognized.
- Unlike freehold under the Western concept, land in full ownership (*mulk*) faces one barrier in regard to transaction through sale: the pre-emption (*shuf’a*) gives co-inheritors or neighbors a privileged option to purchase the land when it is for sale. This process can keep strangers to communities on the outside while it can limit or prevent certain kinds of economic development that may ensue from external investment. Many customary land systems in Africa and elsewhere used to follow, and some still apply, such practices.
- land in full ownership (*mulk*) which is sometimes translated as full private ownership or in Western terminology as freehold;
 - state-owned land (*miri*) which the state owns as a representative of God and in the trust of the community of Muslims and under which a range of access and usufruct rights for individuals can be created;

ACCESS TO LAND

One of key religious obligations for Muslims is compulsory charity (*zakat*) which recognizes landless people as a primary beneficiary group. As described above, all land belongs to God and may only be used and cultivated by humans. In this sense, land ownership must be just and in line with the overall social responsibility of Muslims. As a result Islamic principles include land rights for a broad range of potentially marginalized groups, including women, children, people who are landless and minorities.

Land ownership is fragmented in many Muslim countries, often with one individual holding small parcels of land in multiple tenures. The reasons for this are twofold: firstly, land is mostly accessed through complex combinations of interrelated tenure relationships due to the parallel existence of Islamic principles, colonial legacies, custom, informal and statutory norms. And secondly, Islamic inheritance rules allocate fixed specified shares to a number of individuals within the deceased's extended family. This is the case in Indonesia, where land fragmentation due to fixed inheritance rules often leads to co-ownership and co-tenancy, though shares are fixed and in individual names.

ASPECTS OF ISLAMIC PRINCIPLES FOR SPECIFIC POPULATION GROUPS

There are elements of Islamic principles pertaining to specific groups of the population that are important to acknowledge, since they are not only sacred rights but obligations owed to God aiming to achieve equitable distribution of wealth and rights for all.

Women

Muslim women, like women in non-Muslim societies, face significant obstacles in accessing land rights. However, Islamic law provides a range of rights to property to Muslim women, for instance the right to acquire, hold, use, administer, inherit and sell property including land. A Muslim woman does not lose her property rights when she marries and may purchase property using her earnings or the gifts she may receive from her or her husband's family or on what she may enjoy as beneficiary of an endowment.

Even though the *Qur'an* states that women and men are each others guardians and mutual protectors, it is often interpreted conservatively and used to justify male superiority. The resistance to gender equality is further based on the fear that equality would undermine family and social dynamics.

Under Indonesian law both women and men have equal rights to acquire and own land. The law also states that all property jointly acquired in the course of a marriage should be registered in both husbands' and wives' names and calls for registration of all land. But in practice, only 25% of land parcels have been registered, and only between 20-30% of the registered land is registered in the names of women, 65% or more in the names of men and only 4-5% in multiple names. The most common reasons for limited joint titling are lack of awareness of the possibility of joint names and the customary practice to list the husband as head of the family.

All Muslim governments have not committed themselves explicitly to gender equality on all fronts. However, on the ground, there are major changes in the way women are able to assert their rights, autonomy and freedom - without necessarily undermining Islamic or socio-cultural values.

Women in general have restricted access to courts or legal assistance. However, if they have the opportunity, many

Muslim women do access the legal system, whether customary, Islamic (*Shari'a*) or state courts. Family courts are being promoted in several Muslim countries, including Morocco and Egypt, which are designed to be less legalistic and to encourage a mediation approach.

In Morocco a new Moudawana – Moroccan Code of Personal Status – was introduced in 2004. Its objective was to free women from the injustices they endure, to protect children's rights, and to safeguard men's dignity within the spirit of Islam. The reforms in the Moudawana offer substantial changes to the formal status of women and are to a degree supportive of the nuclear married family. It envisages joint decision making between husband and wife as well as joint ownership of property within marriage while the previous version of the Moudawana had still been identifying female citizens as minors unable to enter into marriage contracts on their own and needing to be represented by a guardian or tutor until the husband took over.

Children and youth

Children's and youth's access to land and housing is often ignored in Muslim countries as in others on the assumption that the family will provide for their needs and that property rights are almost exclusively an adult concern. However, conflict, displacement and HIV/Aids often result in the loss of family protection and consequently rights to land and property.

The *Qur'an* recognizes child and youth rights in several dimensions and can, therewith, strengthen the position of vulnerable children. It assumes divine responsibility for the creation of every child, recognizes the life of the unborn and prohibits parents to kill their children. It emphasizes the equal preference of both sexes by criminalizing the practice of female infanticide. Islamic understanding of child rights, further, contains several strengths such as the rights of orphans.

Most Muslim countries have ratified the 1989 Convention on the Rights of the Child and support its child-centered guarantees and rights.

Minorities

One of the general concerns about traditional legal systems, such as Islamic law, which are based on religious principles, is the rights of minorities. Minority status can add further risk to already marginalized groups such as women, children and refugees. Forced evictions are, for instance, more likely to target minorities who are often voiceless.

In theory, the *Qur'an* guarantees non-Muslim minorities who live in an Islamic State inviolable protection of their life, property and honor in exactly the same manner as Muslims. However, in practice non-Muslims and Muslim minorities do not always have access to full land rights and face discrimination. A clearer reading of the *Qur'an* and the Islamic law could pave the way for enhanced property rights for minorities.

Migrants and displaced persons

Migrants and displaced persons are among those most defenseless in regard to land grabbing, forced evictions or exclusion from access to land and housing. Refugees who are considered as illegal immigrants have only limited rights even though some may have lived for decades in refugee camps within a certain country. Equitable access to land and housing and protection of property rights would, however, be crucial for their search for permanent solutions such as voluntary return to the home country, integration in the host country or relocation to a third country.

The 1951 Convention on the Status of Refugees, which has over 150 State ratifications, has been controversial

for Muslim States due to its exclusion of Palestinian refugees. However, the Organization of Islamic Conference (OIC) emphasizes that 'Islam laid the foundations for the institution of asylum in its public law through the holy *Qur'an* and the Tradition' and that 'respect for migrants and those seeking refuge has been a permanent feature of the Islamic faith.'

Internally displaced persons, not addressed in the 1951 Convention on the Status of Refugees, are most at risk of losing their land rights. However, Islamic law, if interpreted and implemented according to its principle of equity, has the potential of strengthening land rights for internally displaced persons and other vulnerable sections of society in the same way as for refugees and migrants.



05

HOW ISLAMIC PRINCIPLES CAN BE APPLIED TO LAND

The elements inherent in Islamic principles which are relevant to land can have several practical implications. Islamic legal practice with its emphasis upon partnership and community welfare has, for instance, the ability to respond creatively to the needs of the urban poor. Similarly, the pro-poor approach and the egalitarian principles that are integral to an Islamic way of life may legitimize and support modern land readjustment and slum-upgrading strategies. This is not to say that there should be a preference for religious discourse over universal or secular land approaches, but rather to suggest a pragmatic strategy/approach where Islamic land principles may complement, and offer authentic land solutions in some contexts.

LAND MANAGEMENT

The problems many Muslim countries face in land administration are not exceptional to the Muslim world or different from other regions but often arise out of misuse of limited resources, inefficient structures and a democratic deficit. Accountability, particularly against misuse of power and corruption, is repeatedly stressed

in Islamic literature. The concepts of justice (*adl*) and consultation (*shura*), embedded in Islamic consciousness and administrative practice over centuries, are highly influential.

Under Islamic theory, the role of the State is to supervise land, which ultimately belongs to God, for the benefit of the community. The State is mandated to administer land, efficiently and fairly, in accordance with God's laws and ethical and moral principles. In reality, there exists no ideal Islamic State. The general trend is that Muslim States selectively adopt Islamic principles according to their interpretation. But at a policy level, a State following Islamic principles has not only the authority but also the obligation to orientate its land policy towards the benefit of the community.

One of the biggest challenges for land administration is the development of appropriate land information systems which can provide the necessary information with regard to land rights, use and value. Land information system is not an exclusively Western concept but an integrated part of many Muslim societies. Especially in the Ottoman

period, land registration systems flourished and contained, for revenue purposes and resolving land disputes, all available land-related information. Today several countries, like Jordan, Algeria and Morocco, are working on establishment and extension of land information systems, often with international support. Several other countries such as Yemen have received extensive support for land titling processes. The successes of these projects vary and Muslim countries have diverse attitudes towards cadastre or titling but there is nothing in Islam restraining these attempts.

INHERITANCE RIGHTS

Inheritance is one of the most detailed fields of Islamic law, providing for the compulsory division of an individual's property upon death. The inheritance rules are derived from the *Qur'an*.

Generally, not all land is subject to Islamic inheritance rules. While land held in full ownership (*mulk*) is inherited according to Islamic law, access and usufruct rights to state land (*miri*) are traditionally inherited outside Islamic inheritance rules.

Qur'anic heirs or sharers (mother, father, husband, widow, daughter, son, full/half brother or sister, paternal/maternal grandfather and other relatives from the father's side) are, when

entitled to inherit, given fixed shares and cannot be disinherited, except in extreme circumstances such as causing the death of the deceased. In a simple case an estate will be shared between the deceased's parents, husband or wife, and children. A surviving parent will receive one-sixth of the estate, the surviving spouse one-eighth (a wife) or one-quarter (a husband), with the balance shared between the children, with sons receiving twice the share of daughters.

Islamic inheritance principles, hence, do not give the same freedom to decide where property will devolve upon death 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*) and therewith play an important role in providing for vulnerable children not being

One example of the important role communal or tribal land previously played was musha (Arabic for shared) land, found mostly in rural agricultural contexts, notably in Palestine. The musha system involved a periodic reallocation of shares of arable land amongst members of a village who held the land in common.

among the *Qur'anic* heirs like orphaned grandchildren, adopted children and children raised within families without sharing a blood relationship with the family members.

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 smaller but specific rights to fixed shares under the Islamic inheritance rules.

Islamic inheritance law may result in uneconomical land subdivisions. Due to excessive fragmentations that compliance to inheritance practices entails, land holdings of individuals or families can become too tiny to allow profitable land based economic engagement and adequately support gainful livelihoods. There is no minimum threshold below which rights or the land itself may not be sub-divided and this leads to uneconomic holdings both in physical as well as legal sense.

Such an undesirable consequence of inheritance is minimized where local customs and practices allow land readjustment or group or communal ownership.

ENDOWMENT (WAQF)

Islamic endowment (*waqf*) is a highly significant legal mechanism and a key Islamic institution. Under the *waqf* an owner permanently settles property, its usufruct or income, to the use of the general welfare or for the benefits of certain groups or even family members.

Over time the *waqf* has involved the contributions of hundreds of rulers, thousands of families and millions of ordinary citizens and once amounted to one third of the Islamic Ottoman Empire. Several factors, both economic and political, led over the last century to the decline of the *waqf*. Modern states, such as Egypt, abolished or severely limited the *waqf* in the name of land reforms, particularly the family endowment. Elsewhere, as in India, the *waqf* was nationalized, with the land brought under the control of specific ministries or boards.

However, there is growing contemporary interest in the revival of existing Islamic endowments and new endowments adapted to modern management and regulatory frameworks. There is support among Islamic communities for the idea of *waqf* at local, national and international levels since it has the potential to enhance security of tenure for the urban poor. New *waqf* could, for instance, be created to help in land redistribution, strengthening civil society and supporting effective housing microfinance.

In Malaysia waqf plays an important social and economic role. However, thousands of acres of waqf land are currently vacant or underutilized, primarily because they are unregulated or detached from the reality of market forces. But there are also several cases of good practice where waqf land is leased at market price to investors and the income is used to finance access to land and development of urban poor communities. Despite relative advances in the Malaysian land administration system to engage with waqf properties, waqf needs more attention and integration into the system, particularly in terms of land information. A full survey is a daunting task given the scale of the endeavour. There are also issues like the recognition, measurement and valuation of waqf assets. The limited monitoring and control, in addition to an absence of proper accounting standards, is being addressed by the State Islamic Religious Council to improve performance of waqf. An accountability and responsibility matrix is being proposed to ensure proper systems are in place.

DISPUTE RESOLUTION

There is a great variety of legal institutions as well as individuals implementing Islamic law: Muslim judges (*qadi*), administrative offices such as an ombudsman (*muhtasib*) and informal legal authorities such as the mufti providing advisory opinions (*fatawa*, singular *fatwa*). Their roles often overlap sometimes leading to tensions. Most Muslim countries with their legal pluralism have modern hybrid dispute resolution mechanisms but Islamic principles and methodologies are still often influential.

The Muslim judge (*qadi*) balances the rights and duties owed to God with the rights of individuals. Often the *qadi* has to deal with non-Islamic law or a combination of Islamic and non-Islamic norms. It cannot be assumed that a judge in an Islamic legal system will only refer to Islamic legal principles, particularly on matters such as a land contract, since laws relating to social relations, such as property relationships, have both religious legitimation and secular aspects.

The idea of an ombudsman, with broad oversight and a defined mandate, which has worked in many modern contexts,

has its roots in the Islamic framework. Traditionally, the Islamic ombudsman (*muhtasib*) was in charge of promoting both a just society and an efficient market economy and functioned like a market inspector, chief public health officer, receiver of complaints and land use enforcer. However, the institution of an ombudsman has declined over the last centuries but could be made effective again in contemporary Muslim societies.

Islamic legal opinions (*fatawa*) consist of a formal advice or response to a question asked by an ordinary person and issued by someone who is considered knowledgeable on a certain point of Islamic law. Even a state can seek religious advice on or endorsement of a controversial position from a well-regarded authority.

In the past, disagreements and disputes were either settled through the community or through formal legal procedures; lawyers were not required for this purpose. Concepts of mediation or conciliation are found in the *Qur'an* and include conciliation (*sulah*), where the believers are called upon to settle their disputes outside court and in mutual agreement, mediation (*wasta*), when compromise is not possible, as well as the more formal arbitration (*tahkim*).

These traditional ways of managing, reducing and resolving conflicts remain important. For example, within contemporary local development projects in Lebanon, mediation (*wasta*) is observed as a continuing practice of social exchange and face-to-face contacts in dispute resolution.

ISLAMIC MICROFINANCE

Islamic financing principles emerge from a broader economic ideology and distinctive values that are based on achieving a just and equitable society. The *Qur'an* welcomes good trading practices but is also conscious of people who are unable to trade or engage in commercial activities and praises charitable acts towards the poor. Quest for possession and profit is, in contrast, only allowed as a means for providing livelihood and not as a goal in itself.

Islamic microfinance is generally understood as lending by Micro Finance Institutions which is in compliance with Islamic law and Islamic economic principles, particularly the prohibition of interest (*riba*). Since microfinance, including land and housing micro-credit, is a growing industry worldwide, Islamic microfinance is also expanding.

The traditional banking sector has been designed to meet the needs of middle- and upper-income clients and is therefore not accessible, appropriate

or affordable for the majority of the urban poor. Microfinance institutions, in contrast, provide financial services including credit, savings, cash transfers and insurance to individuals excluded from or ignored by the conventional institutions. One well-known and very successful example is the Grameen Bank in Bangladesh, established in 1976 to provide small collateral-free loans to the rural poor for productive enterprise purposes.

A 2004 report on microfinance in the Arab world finds that the region has seen a significant improvement in terms of outreach to women borrowers. Up from approximately 36 per cent of borrowers in 1997, women currently make up 60 per cent of all clients in the region. Grameen in Bangladesh, Micro Fund for Women, in Jordan and Hodeidah are few success stories of innovative schemes run by women for women – though not always based on Islamic principles.

Islamic microfinance, which is implemented in compliance with Islamic law and Islamic economic principles, can provide access to

finances to access land for those sections of society, particularly women, who are traditionally excluded from credit. Evidence also shows that when lending to women, the impact can lead not only to improvements in their and their families' economic status but also the wider empowerment of women.

Launched in 1997, Hodeidah is currently the third largest microfinance programme in Yemen. It serves very poor clients along the Red Sea coast by providing credits for entrepreneurial activities using a two-stage purchase and resale mechanism, with a fixed service charge and repayment schedule determined in advance. About 80% of the clients are women who participate in group lending with an outstanding average loan balance of 25US\$. Hodeidah reached a total of 3,900 clients in March 2008 and is based on Islamic financial values, which expands its potential clientele, because many Yemenis feel reluctant to accept normal loans due to religious reasons.

SLUM UPGRADING

Muslim cities generally face similar urbanization issues as other cities including concentrations of informal settlements. Slum upgrading programmes are underway in several Muslim countries.

The pro-poor and participatory approaches of Islamic principles as well as innovative Islamic finance products could stimulate slum-upgrading processes. Such processes would also benefit from Islamic principles support for the elements of land sharing, readjustment, regularization, simplified planning and improved taxation. Islam also recognizes collective rights which offer flexible arrangements.

In particular, the rights of landless poor, slum-dwellers and squatters could be addressed through redistribution or revival of *mawat* (dead) land or optimizing Islamic endowment (*waqf*) land. In the Islamic welfare State, the public treasury (*bait-ul-maal*) has a specific mandate for poverty alleviation, redistribution and support of the landless and is expected to fund access to land for the landless poor.

Islamic finance, with its prohibition on usury (interest) and its pro-poor emphasis, could benefit the poorest of the urban poor, including squatters on remote or unutilized land and those living in rental arrangements in

overcrowded inner-city slums that tend to fall outside the net of the general finance industry. Effective housing microfinance programmes which are following Islamic principles and ethics could, for instance, facilitate the purchase, construction and improvement of homes, the installment of basic services or the funding of land-titling processes.

The Slum Upgrading Facility (SUF) at UN-HABITAT has pilot projects in Indonesia and Tanzania (where there are Muslim majorities) as well as Ghana and Sri Lanka (with Muslim minorities). SUF works with local actors to make slum upgrading projects “bankable” – that is, attractive to retail banks, property developers, housing finance institutions, service providers, micro-finance institutions, and utility companies. A women-led initiative in Ghana, for instance, has been supported in negotiating with the Metropolitan Assembly to manage the construction of new market facilities, that the women would finance through a bank loan, and also be exempted from paying standard taxes and fees during a period to be negotiated.

06

CONCLUSION

This booklet identifies some of the key Islamic principles, values and practices influential in supporting wider access to land and security of tenure. Though these concepts are rooted in individual faith, the reasons for considering them are pragmatic. There are numerous useful principles which could be harnessed to realize the universal and Islamic goals of fair, equitable and sustainable land rights. Like customary norms, these principles have both the legitimacy and ownership of indigenous principles and are at the same time evolving and adaptable to modern challenges. The gap between Islamic theory and practice is being addressed by Muslims and non-Muslims the world over.

The purpose of understanding and disseminating knowledge about Islamic land systems is not to promote Islamic law. Rather, it is to sensitize those who work in Muslim countries on the role that some of the Islamic land and property principles and practices play in improving access to secure land tenure. It goes without saying that issues raised in this publication and good practices recognized need to be cultivated/promoted with a view to making

them compatible with local practices and interpretations of the *Qur'an*, other sources of Islamic law and also statutory systems. The extent to which Islamic principles need to be applied to a particular setting differs between and among contexts. Islamic best practices with respect to land may well provide large or small components of successful land policies in the Muslim world.

The Global Land Tool Network (GLTN) has initiated the Islamic Mechanism as a potential value-addition approach to land strategies in the Muslim World, but the area is under researched and existing best practices are not fully documented. Therefore, GLTN welcomes ideas, experiences and inputs into this promising area of the global land agenda.

07

GLOSSARY

TERM	MEANING
<i>Adl</i>	<i>Justice, one of the fundamental concepts in the Qur'an</i>
<i>Al-harym</i>	<i>Protected zone for environmental protection</i>
<i>Amanah</i>	<i>Trust, such as land held in trust by humans on behalf of God</i>
<i>Awqaf</i>	<i>Plural of waqf, Islamic endowment</i>
<i>Bait-ul-mal</i>	<i>State treasury for welfare, also a mechanism for managing charitable funds</i>
<i>Fatwa</i>	<i>Formal advice from a competent authority (mufti) on a point of Islamic law or dogma, given in response to a question (plural, fatawa)</i>
<i>Hima</i>	<i>Special reserves, for example, those established by the State for use as conservation zones</i>
<i>Hisbah</i>	<i>Islamic institution or ombudsman for enforcement of public interests</i>
<i>Iqta</i>	<i>Grants of land by the State, for example for land reclamation or development</i>
<i>Mawat</i>	<i>Dead or empty land, which can be reclaimed or revived</i>
<i>Mehlul</i>	<i>Land left uncultivated</i>
<i>Metruke</i>	<i>Public land for general use such as markets, parks and places to pray</i>
<i>Miri</i>	<i>State land</i>
<i>Mufti</i>	<i>Theologian who is competent to issue an advisory Islamic legal opinion (fatwa) in response to a specific question</i>
<i>Mulk</i>	<i>Land in full ownership</i>
<i>Musha'</i>	<i>Communal land</i>
<i>Muhtasib</i>	<i>Ombudsman</i>

TERM	MEANING
<i>Qadi</i>	<i>Judge in an Islamic court</i>
<i>Qur'an</i>	<i>Sourcebook of Islamic values and the primary source of Islamic law (Shari'a)</i>
<i>Riba</i>	<i>Usury, the Islamic prohibition of interest</i>
<i>Salah</i>	<i>Prayer or worship performed five times a day by Muslims</i>
<i>Shari'a</i>	<i>Islamic Law</i>
<i>Shi'a</i>	<i>Minority branch of the Muslim community which claims the Prophet named Ali as his successor</i>
<i>Shura</i>	<i>Concept of consultation discussed in the Qur'an, relevant in the context of democracy in Islam</i>
<i>Shuf'a</i>	<i>Preemption, a barrier upon the free disposal of land and the means by which a co-inheritor, or in some cases a neighbor, may use a privileged option to purchase land when it is for sale</i>
<i>Sulah</i>	<i>Conciliation, an Islamic dispute resolution technique which requires compromise between two parties</i>
<i>Sunni</i>	<i>Largest group within the Muslim community, who believes that Prophet Muhammad died in 632 AD without choosing any successor</i>
<i>Tahkim</i>	<i>Arbitration, an Islamic dispute resolution technique which involves a mutually acceptable arbitrator</i>
<i>Waqf</i>	<i>General term for charitable endowment, also habous in North Africa</i>
<i>Wasta</i>	<i>Mediation, an Islamic dispute resolution technique whereby one or more persons intervene in a dispute either of their own initiative or at the request of one of the parties</i>
<i>Wasiyah</i>	<i>Islamic will</i>
<i>Zakat</i>	<i>Charitable obligation for Muslims</i>

ABOUT THIS PUBLICATION

This booklet arises from GLTN's work on Islamic dimensions of land which 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). Based on this research a training course on *"Islamic Land, Principles and Housing Rights in the Muslim World"* has been produced in 2010.

The booklet provides a short summary of the key principles and elements of Islamic dimensions of land. It is intended for land professionals, policy makers, and any other stakeholder working in the land sector, who is 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 projects and programmes.

UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME
Shelter and Sustainable Human Settlements Development Division
Shelter Branch (UN-HABITAT)
P. O. Box 30030, Nairobi 00100, Kenya
Tel: +254 207623120;
Fax: +254 207624266
Website: www.unhabitat.org

UN **HABITAT**



**GLOBAL
LAND
TOOL
NETWORK**