

ISLAMIC LAND TOOL DEVELOPMENT

The Global Land Tool Network (GLTN) aims to establish a continuum of land rights, rather than just focus on individual land titling; improve and develop pro-poor land management, as well as land tenure tools; unblock existing initiatives; assist in strengthening existing land networks; improve global coordination on land; assist in the development of gendered tools which are affordable and useful to the grassroots; and improve the general dissemination of knowledge about how to implement security of tenure.



Introduction and Brief Overview

Most land, property and housing issues faced by Muslim societies are not dissimilar to those encountered elsewhere, but strategies and tools often need to be adapted to these specific contexts. About 20% of the global population is Muslim (including significant minorities in the West and elsewhere) which is influenced to varying degrees by Islamic land principles, either through official systems or informal practices.¹ This impacts land management systems as well as security of tenure in various parts of the Muslim world. However, global approaches to secure tenure rarely acknowledge that several Islamic land principles potentially offer opportunities for enhancing property rights. The objective of the Global Land Tool Network (GLTN) Islamic Land Tools initiative is to facilitate the development of innovative, pro-poor and gendered Islamic land tools which could be used appropriately in specific contexts.

Three broad challenges face tool development in the Muslim world. First, the crystallisation of positive strategies from the Islamic land discourse, and best practices from the Muslim world, need to inform the tool development process. Second, there is a need to prioritise specific Islamic tools which can be innovative, pro-poor, gendered, affordable and scalable. Third, interface between the various actors i.e. tool developers, grassroots, civil society, States, development partners and scholars – is needed to harmonise universal, Islamic and professional land principles. This mechanism proposes how this could be done.

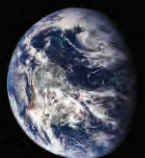
Operationalising Land Tool Development

Islamic land tool development is not a preference for religious discourse over universal or secular land approaches. It is a pragmatic strategy which could enhance the knowledge and augment the capacity of GLTN partners to work more effectively in Muslim contexts. Though Islamic principles are

influential, they intersect in dynamic ways with State, customary and international norms. Hence, their relationship with other systems of formal and informal land tenure needs further study. In clarifying Islamic principles and developing effective tools, injurious cultural practices carried out in the name of religion could be countered. Yet, Islamic land tools, even in Muslim countries, cannot be a substitute for the continuing process of universal or generic land tool development. The complementary role or appropriateness of Islamic tools depends on particular demands and contexts.

There is an increasing demand for authentic land solutions and tools in several Muslim countries. Where there are enduring Islamic land practices, a range of tools, including Islamic tools, need to be considered. Reviews of property rights in Muslim societies (including among European Muslims) have pointed to several critical gaps. Whether it be funding through Islamic finance or models such as Islamic

¹ Sait, S and Lim, H (2006) *Land, Law and Islam: Property and Human Rights in the Muslim World* (London: ZED).



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endowments (*waqf*), there are distinctive approaches. Equally, locating women's property rights and inheritance within Islamic principles is challenging.² Little is known about existing Islamic land tools but more information can lead to their up scaling alongside systemic development of new tools in response to the gaps.

Research on Islamic Land Tools

UN-HABITAT has completed the first phase of research on Islamic Land Tools (2004-2005) through web publications, creation of research database and preliminary consultations with partners. A pioneering UN-HABITAT report of September 2005 carried out by University of East London explores eight themes - land theories, law, human rights, land tenure arrangements, inheritance, women's rights, endowments (*waqf*) and microfinance.³ It points to a range of strategies which could potentially empower vulnerable categories such as the landless, urban poor, women and squatters. Several influential concepts such as *ijtihad* (reasoning), *maslaha* (public interest) and *adl* (justice) generate approaches which can assist the construction of workable tools including those which support women's rights.

At the Arab Regional Meeting in December 2005, experts adopted the *Cairo Initiative*

on *Islamic Land Tools*⁴. It specifically calls on UN-HABITAT as focal point and GLTN to garner regional and international support and resources to consolidate and further promote the development of Islamic land tools. Among the endorsers of the study include the Al Azhar, the leading Islamic institution and the Government of Egypt. However, it is proposed that like customary tools, the development of Islamic land tools not be seen as an internal matter but a cross-cultural, interdisciplinary and global effort. The ownership of the process by Muslims is important. Equally, civil society and development partners must contribute to a process that is inclusive, objective, systematic and transparent.

Professionalizing the Process

The process needs to be representative, focused, constructive and non-ideological. Every Islamic professional tool undergoes the rigorous process as do other tools. Therefore, consultations between representative groups of professional tool developers, civil society, Islamic scholars, policy makers and development partners are needed. Specific inputs of GLTN partners will stimulate Islamic tool development. Harmonisation of universal and Islamic principles, objectives and values enables systematic identification, upscaling, development and evaluation of Islamic tools. The Islamic tool development process generally follows the stages similar to develop-

ing other types of land tools, adjusted to its distinctive sources, needs and sensitivities. The relationship between Islamic and other tools will be explored in order to facilitate valuable cross-fertilisation through best practices. The main players will be the community groups including grassroots women, tool developers, State officials and development partners with the addition of Islamic scholars and Muslim communities and institutions. The process will be realised through the GLTN by the following steps:

1. Facilitating Islamic Tool Networking
2. Reviewing Land Tool Frameworks
3. Conducting Islamic Research and Analysis
4. Determining Priority Land Tools
5. Promoting Islamic Land Tools Dialogue
6. Mobilising Tool Support of Member States
7. Evaluating Islamic Land Tools

In operationalising the Islamic land tools initiative the Global Land Tool Network needs dialogue, partnership, methodologies, expertise and resources. GLTN partners and its development partners, who already work in these areas, could provide leadership and direction in order to 'authenticate' tools. This tooling approach could result in far reaching changes in the protection of land, housing and property rights in the Muslim societies all over the world.

² See for example Moors, A. (1995) *Women, Property and Islam: Palestinian Experience, 1920-1990* (New York: Cambridge University Press)

³ UN-HABITAT (2006) *Islam, Land & Property Series* <http://www.unhabitat.org/programmes/landtenure/publications.asp>

⁴ Adopted at the *Workshop on Land Tenures* at the Arab Ministerial Meeting on Urbanisation, Cairo, December 17-18, 2005. It was hosted by the Government of Egypt and organised by United Nations Economic and Social Commission for Western Asia (ESCWA), UN-HABITAT, and the League of Arab States.

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