



Scaling up Responsible Land Governance

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 14-18, 2016



IMPROVING WOMEN'S ACCESS TO LAND AND PROPERTY IN THE ARAB STATES: THE ROLE OF INHERITANCE, DOWER, AND MARITAL PROPERTY

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**Paper prepared for presentation at the
“2016 WORLD BANK CONFERENCE ON LAND AND POVERTY”
The World Bank - Washington DC, March 14-18, 2016**

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Abstract

Despite limited consolidated data, women in the Arab region are widely acknowledged to be lagging behind their access to land and property rights. This not only poses concerns regarding the full realisation of their human rights and well-being, but also has a negative impact on the social economic development, food security, climate change and peace and stability in the whole region. Particular attention needs to be drawn to women affected by conflict, displacement and migration, whose - and whose children – survival, protection from physical violence and capacity to recover from the conflict are closely dependent on access to land and housing.

This collaborative paper outlines how to work with the prevailing legal pluralism present in the region to capitalize on the strengths of statutory, customary and religious laws and practices to increase women's access to land in the Arab region. The outcomes of the research developed by Global Land Tool Network partners make the case for women organisations, communities, governments and development actors to focus on key selected approaches that proved effective improvement of inheritance and dower mechanism, strengthening of women secondary rights, and capitalizing on the role that marriage could play in securing land rights for women, particularly through joint marital property.

Key Words:

Arab, Conflict, Displacement, Inheritance, Land, Marriage, Women.

1. Background

Despite limited consolidated data, women in the Middle East and North Africa are widely acknowledged to be generally lagging behind in their access to land and property rights. While many obstacles are not different from those faced by women globally, Arab women often encounter additional challenges that are specific to the region: overlapping and poorly regulated tenure regimes, weak rule of law, gender discriminatory traditional practices and social norms, overall social and economic disadvantaged position in the society, low education, and a fast degenerating security situation in many countries within the region which are increasingly being affected by conflict, displacement and forced migration.

Development literature outlines how women's access, use and control of productive resources, including land, are vital for addressing not only intrinsically important issues of women's empowerment, livelihood and shelter but also broader issues of food security, environmental sustainability and conflict prevention, mitigation and resolution for families and communities. The horrifying images on the people affected by the Syrian crisis during the 2015 winter depict how access to land and housing is crucial to the mere survival of women and children.

Conflict and displacement are increasingly recognized as factors exacerbating existing gender discrimination. Access to land and property – on the other hand - is proven as essential for women and their dependents to survive displacement and access shelter and livelihood opportunities, necessary to recover from conflict and emerge from poverty. The importance of addressing land and gender issues in the Arab world is therefore more urgent and compelling than ever.

Yet, women's land rights in the region have received very limited systematic attention, as seen by scarcity of papers at this annual conference over the years. Evaluations of the impact of the investments made in programmes and interventions addressing housing, land and property rights and rule of law issues have consistently neglected the gender dimension. Overall, a shared understanding of what works and what does not work to increase access to land and property rights for women in the Arab world is still missing among governments, communities, women organisations and development actors.

This collaborative paper presents the results of two years of work carried out in partnership by policy makers, professionals, researchers, scholars and civil society, under the auspices of the Global Land Tool Network led by the University of East London, the Urban Training Institute, Egypt, the Union of Arab Surveyors and UN-Habitat. Lessons learnt from the research done and the case studies analyzed are shared to highlight what, in the opinion of the authors, are the key elements that can bring change to the life of women and social and economic development to the Arab society as a whole by increasing women access, use and control of land and housing.

2. Legal Pluralism at the Service of Women's Land Access

Women in the Arab world – to a large extent not dissimilar from women living in other regions – obtain access, use and control over land and housing through a variety of avenues. Substantial national and local variations can be observed in the processes through which women access land and property. Some fall

within the statutory, formal system and are managed or regulated by the state. Others are customary, informal or religious approaches. Significant variations can be experienced between processes and countries in the degree of security provided, quality of the service delivered, extent of compliance with international legal frameworks, responsiveness to the needs of different categories of women, costs to be sustained, and ease of access. However, further effort is need to be improve and hamonise contrasting but coexisting systems in any given context to effectively increase access to land for women in the Arab region.

Formal processes, based on statutory law, are often - on paper - more gender responsive than customary and religious practices, as they incorporate to a large extent international legal and policy frameworks. However, in practice, evidence shows that women's access to land and property is often regulated through customs or religious practices, especially in rural areas and conflict-affected contexts.

As an example, Tunisia, one of the most progressive Arab countries in terms of gender equality, lifted all the reservations to the United Nations Convention on the Elimination of all forms of Discrimination against Women in 2011 (Council of Europe 2014). The new Tunisian Constitution, adopted in 2014, commits the country to the achievement of gender equality, elimination of violence against women, and promotion of women's representation, participation and empowerment. Reforms regulate 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 it belongs to the father. Amendments to the personal status code in 1993 introduced the idea of the 'joint estate regime' to ensure that spouses have joint ownership of property specifically intended for the household's own use. Couples also have the right to opt for the equal division of all property acquired during the duration of the marriage (OECD 2014a). In spite of that, access to land remains far from equal for women and men, particularly in rural areas, where traditional practices are still adopted by the communities.

In fragile states and contexts affected by conflict and displacement, justice and rule of law are often administered through customary mechanisms, especially matters related to family law, including access to land and property. Customary land disputes resolution mechanisms, in particular, still seem to be better placed than formal court systems to respond to women's needs. In Gaza, between 2004 and 2010 there was a 20 to 25 percent increase in cases heard before customary dispute resolution mechanisms (*rabita* committees), rather than in formal (*nizami*) courts (Norwegian Refugee Council, 2013). Equally, in the Puntland State of Somalia, comparative studies show a preference for customary and religious land dispute resolution system, which have resolution timelines of a moth or less, over formal courts hearings, lasting years and expensive. In Somalia, the Islamic courts became popular in Somalia because they were procedurally flexible, brought in various constituents, and adopted the guiding principles of negotiation and mediation. (Norton 2008: 156). A survey undertaken by the United Nations Development Programme (UNDP) showed that in posr-Tsunami Aceh the Islamic (*syariah*) court system was regarded as considerably more trustworthy and transparent in respect to land matters than general courts (Fitzpatrick 2008).

Overall, and especially in fragile and conflict affected contexts, customary, religious and community based land processes, including land disputes resolution mechanisms, often seem to be better placed to respond to the needs of women in the short to medium term (Sait 2013b). The primary reasons are the physical proximity, lesser costs, and better knowledge of the land processes and the way they operate.

Moreover, especially in the case of land dispute resolutions, customary and traditional mechanisms are perceived as less confrontational and more respondent to women's desire to preserve family relations (IRIN 2013). Nevertheless, 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.

Lessons can be drawn from countries such Palestine, Jordan, Syria and Iraq point to how Islamic land law could be used to increase access to land for women in Muslim contexts with the support of traditional leaders. In Niger, although state law grants equal inheritance rights to man and women and Islamic land law also protects women's inheritance rights, customary practices exclude women from inheritance of land. In this context, women resorted to Islamic inheritance rules to claim their rights to land. A consultation was carried out by the Mirriah Departmental Land Commission, with the support of a local and an international NGO, involving civil society organizations, local authorities, traditional leaders and *marabouts* (Muslim religious men). The discussions concluded that, based on Islamic inheritance rules, women inheritance rights should be respected and registered by the local land commission. Guidelines on Islamic inheritance rules were prepared, reviewed and validated by *marabouts*, traditional authorities, women and farmer organisations, and awareness raising activities were carried out. As a result of the initiative, a number of women have embarked on the process of claiming back their inheritance and several women have been able to secure their rights to land.

At the same time, formal land tenure processes need to be rendered more accessible to women. One of the key ways to do so is by ensuring that the type of tenure solutions offered meet women's needs.

3. Matching Tenure Types with Women's Needs

The types of land tenure that can be accessed by women in the Arab world are diverse and well spread along the continuum of land rights. Some tenure options are more secure than others; some are individual, some provide for the family or the whole community; some are formalized and recorded, while others are just protected by the customs and social norms of a particular country, local context or social group.

While analyzing women's access land and property rights in the Arab world, considerable variation can be observed in the proportion of women accessing land and housing through some particular avenues and distinctive types of land tenure. Yet, limited consolidated information is available on these particular aspects, but clear trends can be identified from local studies carried out over the years.

The prevailing types of tenure accessed by women in a given context are influenced not only by the processes and types of tenure available, but also by the particular needs of women in given contexts. Too often interventions deal with women as an undistinguished category with stereotyped needs. However, it is being increasingly recognized that to adequately secure women's land rights, the diversity of women, their experiences, needs and aspirations have to be better appreciated. Global Land Tool Network partners are currently working on a methodology to build pathways to secure equal land tenure for women building on such diversity. Neither a woman's status in relation to contextual factors nor the contextual factors are static. Tenure and tenure options are affected by a woman's marital status or family

composition, the context where she lives (such as conflict or displacement), the relationships to her relatives (especially male), the income or economic opportunities, the location where she lives (such as rural or urban setting, etc). To understand how to reach equal and secure land tenure for women in particular settings requires combining information to define the specific risks and opportunities she faces and the corresponding approaches that can be effective in her context. Such methodology is expected to shed light on how to better target women land interventions in the Arab region.

Despite secular reforms and modernisation, Islamic land law is often relevant, formally or informally through varying degrees at community level. Islamic land law could express itself through individual, collective, customary and pluralist tenure. Each country case study offers a unique and complex interplay between colonial, Islamic, customary and statutory tenures in contrasting Arab settings (Sait 2011). A study of Islamic land tenures in conflict countries – Afghanistan, Indonesia, Iraq and Somalia - exhibit a range of innovative pro-poor tools for landless people that provide both land access and tenure security (Sait 2013b). An extensive literature shows judicial supervision of registered land rights through land reclamation (*mawat*), endowment (*waqf*), leasehold (*tassaruf*) and collective rights under Islamic systems. All these Islamic tools are in theory gender-responsive, inclusive, and nondenominational. There is no requirement in any of these tools that the beneficiary be Muslim or male (except in the case of the Islamic cooperatives, where ostensibly religion is a primary bond). *Tassaruf* and reclamation of *mawat* arise out of land use, rather than gender or religious beliefs. The *waqf* is a gender-responsive Islamic land tenure that has traditionally included women as creators, managers, beneficiaries, and users (Sait and Lim 2006). It has been used across the centuries to provide shelter and income for the poor, including women headed families, orphans, pilgrims, and poor. It is still a viable option that should be further explored to provide protection and shelter to vulnerable groups and women in need, especially in conflict and displacement contexts.

Land reform and redistribution and shelter schemes are also important avenues to improve women's access to land. With adequate attention paid to gender responsiveness and cultural feasibility in the design and implementation of the interventions, the shortcomings of conventional male-dominated approaches could be overcome.

4. Ensuring Muslim Women's Inheritance Rights

Full ownership is often a preferred type of tenure to which women can aspire. It can be individual or joint and it can be achieved through purchase, gift, or inheritance. Significant variations can be registered on how women access ownership of land and property. In urban areas – for instance – it is more frequent to come across women who purchased their land or house, thanks to an enabling environment that allows them to have their own income and enough education to go through the legal process to acquire land ownership. This is however not the main through which women in the Arab states acquire land ownership.

While – to the knowledge of the authors - there are no consolidated figures on land acquisition methods, research on specific contexts or communities show that it is not infrequent that the overwhelming majority of land is acquired through inheritance, especially in rural areas. A village-level study in the Sidi Bou-Zid region of Tunisia found that inheritance accounted for over 70 percent of land acquisitions in

most covered villages, and in some cases even for 100 percent (OECD 2014b). Similarly, there is increasing evidence that inheritance is the key avenue for women to acquire land and property in the Arab region.

This evidence points to the importance of understanding how to render inheritance processes in the Arab world more gender responsive, through an holistic approach that combines statutory laws, Islamic land law and customs.

Much has been written about the unfavorable conditions found in Islamic law about women inheritance rights, which include land and property. The woman's share is generally half of that of the male members, although in some cases, they may have equal share or even a woman can obscure the inheritance of a male relative. This Muslim women's lesser rights in inheritance have for long been regarded as a marker of the inferior status of women under Islamic law. Undoubtedly, these rules violate the non-discriminatory provisions of CEDAW. However, there is a robust viewpoint within Muslim societies, supported by many Muslim women, which argues that the totality of arrangements within the Shari'a is realistic and equitable, in view of financial obligations to the family, mostly falling in principle on men, and compensatory provisions available for women, such as dower, gifts, etc (Barlas 2004). As Muslim women have become more assertive and visible in their enhanced roles and reclamation of rights, they have taken recourse to Islamic sources to demand more rights on the basis of gender-responsive interpretations. This debate is well beyond the scope of this paper, which instead intends to clarify how inheritance of land and property need to be strengthened to increase women access to land.

The reality is that though women do acquire wealth and movable property through inheritance and other avenues, land flows away from women generally. In many Arab countries, women do not inherit land due to customary practice since women are considered as belonging to their husband's family. In patriarchal societies, land is constructed to be a male domain (Joseph 1996). Further, women may be forced to renounce their limited inheritance rights, sometimes to preserve relationships or access to family homes with more powerful family members.

Denial of rightful inheritance share and voluntary renunciation (*tanazul*) of inheritance rights are the two faces of the main land challenges to be addressed in the Arab states. Though Islamic inheritance process does not conceive of a rejection of share by a beneficiary, there is a widespread practice, now incorporated into the legal process, whereby a person, typically a woman, voluntarily renounces her inheritance rights. Other women may give up an inheritance right to land in exchange for cash, or other property that may or may not be paid. Some women renounce their rights to land in order to preserve family relationships with more powerful family members, particularly with their brothers. The 'benefits' of renunciation may include a continuing right of access to a family home. Others would renounce their inheritance to younger male relatives to keep the property intact.

In some cases, ignorance of the statutory and Islamic laws leads to the belief that women are not entitled to inheriting land and housing. In other cases, women land and property rights are deliberately violated, taking advantage of the fact that 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 from doing so, as well as a major cause of personal and social friction and division (Norwegian Refugee Council 2013)

The importance of land inheritance is increasingly being recognized as an area that requires urgent attention by governments, women and civil society organisations and development organisations. Jordan and Palestine have taken up the challenge of tackling women land inheritance issues and offer good lessons to be learnt.

In Palestine, only 5% of women own or have a share in land (compared to 24% of men) and only 7% of women own a house or a real estate property (compared to 57% of men). These statistics drew attention to the issue of inheritance (Palestinian National Authority 2013). A survey done in 2006 in Gaza (Women's Affairs Centre 2006) highlights the key reasons hindering women from claiming their inheritance rights. Approximately 60% of women said that they lost their inheritance rights because of 'fear of family boycott'; 13% because of 'lack of awareness of their rights'; 10% because of 'ignorance of laws and procedures related to inheritance partition'; 7 % of because of the 'lack of financial resources for complaining in a court', and 5% because of the 'social criticism of a women who would embarrass her husband'¹.

To address this issue, in 2011 and 2012, civil society organizations activated the National Committee for the Personal Status Law, a coalition of organizations working to promote gender-equitable legislation. Progress was made with regards to women's rights particularly through Sharia courts. Three administrative orders were passed by the Chief Justice of the Sharia court to reduce the vulnerability of women and to ensure that women have access to accurate information in inheritance cases (ESCWA 2012). 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 as: detailed inventory of the movable and immovable properties of the defunct; evaluation of the belongings to be excluded of inheritance under the renunciation (*tanazul*) procedure; publication of the *tanazul* decision in a newspaper for at least a week, under the supervision of the sharia court; and the final *tanazul* decision should not be registered before the end of four months following the decease.

This decree imposes transparency of the inheritance process, in terms of inventory, valuation, as well as definition of every heir's rights, under the control of official bodies, thus breaking the secrecy, hence the potential intimidation, prevailing inside a large number of families. Land mediation, awareness raising and media campaigns interventions support the implementation of the decree.

Islamic law also has provisions to pass a portion of the land and property through a will (*wasiya*), though this can be only up to a third of the estate. Though this is not universally applied, it is a valid land and property planning tool that can favour female members to compensate lesser inheritance. Another obvious tool for estate planning is the *hiba* (lifetime transfer or gift) that can involve cash, assets or land ownership or land interests. Thus, rules on inheritance shares are part of a wider flexible system for the transmission of property through negotiation, 'estate planning' and post-inheritance adjustment practices which could involve compensatory schemes creating other property and land access opportunities for women (Powers 1993).

¹ The remaining 5% responses were 'other reasons' or 'no answer'.

5. Dower as an Avenue to Independent Access to Land and Property

In the Arab world, dower (*mahr*) is an additional avenue that proved to have an important role to play in granting land and property rights to women (Jacobson 2003). Dower (*mahr*) is a mandatory contractual amount paid by the groom to the bride at the time of marriage or agreed to be payable a later date (Moors 1995); it can be in the form of money, assets or sometimes land and thereby potentially a significant pathway to access to land. *Mahr* is exclusively the wife's property and is intended to give her financial security in the event of divorce. *Mahr* is intended provide some financial security, but it is not fixed and could be a nominal amount (Scalise 2009). Dower legally becomes the exclusive property of the wife, which she is not expected to offer to the family, although they often do, especially when faced with challenging circumstances such as displacement, conflict, etc. *Mahr* is often the only asset the Muslim divorcees can access, where marital property is not available and the importance of dower increases in the absence of Muslim divorcees' maintenance or marital property rights.

The important role of *mahr* for granting access to land and property is well documented by the Norwegian Refugee Council (NRC 2013b) in Afghanistan, where – although not an Arab country, relevant lessons can be learnt for the Arab region, especially in the contexts of displacement and conflict. The report considers inheritance and *mahr* as two key sources of women's – including displaced women - independent access to housing land and property rights in Afghanistan. If adequately accompanied by awareness raising and legal and logistical support for women, the *mahr* provision has the potential to be scaled up, further formalized, and become a more reliable avenue to improve women access to land in Afghanistan as in other countries.

Such processes aiming at increasing women access to land, especially in more conservative societies, need to be accompanied by promotion of women's access to education and their social and economic empowerment. Women asserting their land and property rights run the real risk of rejection from the family and society and even face physical violence and retaliation. The Norwegian Refugee Council's refers to this as the 'impossible choice' to be made by women. For many women and especially disadvantaged or vulnerable groups living in conflict and displacement contexts, family relations and social support are critical for survival in terms of livelihood and personal security. It is therefore not surprising that mostly women opt to maintain good social relationships with the family and claim their rights to land only as a last resort or to trade them with matters of utmost importance to them, such as obtaining the custody of the children in case of divorce.

The case study of Jordan further proves the dramatic choices required from women to claim their rights and how this can only supported through multisectoral approaches supporting women from many angles. The creation of a favorable environment for women, leading to an increase in women claiming their rights, was the combined result of direct land tenure interventions and the fostering of an enabling environment for women. Campaigns against the so called 'honour crimes' were carried out by the Arab Women Organization, had a positive effect on increasing women access to land, which demonstrates the fact that many 'honour crimes' were in reality linked to issues of inheritance (OECD 2014b).

In this light, strengthening women's access independent land and property rights in the Arab states has to be accompanied by equally promoting women's secondary rights, especially user rights.

6. Access to Land and Property through Relationship with Family Members

Inheritance and *mahr* are good avenues to women independent access to land and property. However, the overwhelming majority of women in the Arab world do not own land or housing, but gain access through the relationship with family members, mostly male relatives: fathers, husbands, brothers and children. Such secondary rights, as they are normally defined, do not necessarily offer lesser protection than ownership rights from eviction, as long as the relationship between women and their relatives is 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 peace and stability.

When conflict, displacement and migration occur, families are torn apart and such arrangements are not suitable anymore to secure the necessary protection to women and their children. As in the case of divorce or separation from the households, women find themselves destitute and are often unable even to recover their investments – in cash or kind – made over the years in the land and property where they were living and working.

In line with the continuum of land rights approach, the Global Land Tool Network partners advocate for the recognition of all existing land tenure security arrangements that should be progressively strengthened and improved to become more gender responsive and effective. A wide range of options are being implemented by governments, communities, women organisations and development partners. While the detailed description of such options is beyond the scope of this paper, some of the approaches that seem to offer more potential for improving access to land for women at scale are joint titling; the inclusion of the names of the household members on land and property titles, lease and tenancy agreements; and the explicit mention of the conditions related to land and property regimes in marriage contracts.

7. The Role of Marriage and Joint Marital property

The collaborative research carried out by the authors of this paper highlights the key role that marriage has in defining women access to land and (re-)equilibrate the relationship between women and access to land. Muslim women have absolute rights to acquire property and land throughout their life course from birth and childhood, through marriage and its possible dissolution or widowhood. Muslim women, whether married or not, have historically enjoyed autonomous legal identity and separate property rights (Sait and Lim 2006). Yet, marriage often directly or indirectly impacts their legal status, practical opportunities and traditional rules through which women access, acquire, hold, use, administer, dispose, inherit and bequeath property, including land.

For women living in the Arab world, marriage has impact on three types of properties: the pre-marital, or personal property that belonged to the wife before the marriage, which needs protection; the 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).

Authors suggest that marriage is looked at as an opportunity to strengthen women access to land and overall improvement of social economic situation for the benefit of the family through awareness and

regulation of property regimes at the time of marriage. In particular, the joint marital property options seems to offer a great potential for strengthening women access to land at the scale required, in the Arab region.

Without significant pre-marital assets, gifts, income or savings of their own, most married women rely on property acquired jointly during marriage. For Muslim women facing divorce, particularly the poor, denial of matrimonial property – alongside uncertain inheritance, swift divorces, inadequate dower (*mahr*) and limited maintenance (*nafaqa*) (Aixelà Cabré 2007; Safwat 1995) - renders them effectively destitute or reliant on natal family or the State. Thus, if a wife were considered to have no independent stake in marital assets, she would retain no land rights acquired or accessed or ownership interest in their marital home. Access to marital property is said to empower women, strengthen their property management powers, gives them bargaining power against unilateral divorce and improves their access to credit and other opportunities.

Most Muslim marriages in Arab societies enacted under 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. Property acquired during the marriage belongs to either the husband or the wife, not jointly to the couple. As such it is argued that there is no equivalent to marital property or community property under the classical Islamic jurisprudence (*fiqh*), and that under Islamic law there is no such thing as marital property to distribute.

Upon divorce, a wife cannot have a claim upon her husband's assets under the theory that their acquisitions constitute marital property. Women have no independent right in marital assets and retain no ownership interest in the marital home. Each spouse is entitled to individual property acquired before marriage, or property acquired during marriage in their individual names. If marital property is in the husband's name, as is mostly the case, a Muslim wife has no proprietary interest in matrimonial property, only access to the use of such property during marriage. A common assumption is that there exists no concept of marital property in Islamic law. However, There are no jurisprudential constraints under Islamic law for incorporating joint marital property (Sait 2013a). In fact, Islamic marriage concepts have several features such as the marriage contract that make it more receptive to community property doctrine, more than in common law systems. Despite the religious character of Islamic law, the marriage contract is a civil agreement without sacramental associations (Hallaq 2009). A significant proportion of Muslims view joint marital property regimes as an option and this Muslim practice is significantly practiced in diverse Islamic legal systems.

The vast 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. Family law reforms recognising common marital property principles have been part of Islamic law reform, in Morocco, Tunisia and Iran as well as in Asia in Indonesia, Malaysia and Maldives. These strategies have a potential to be applied in the Arab world too, but the challenges are cultural and political, rather than religious.

The main tool for accessing land through marital property is the Islamic marriage contract. It is not possible to enter into a Muslim marriage without signing *aqd* (contract) for *nikah* (marriage ceremony). As seen in the case studies from Morocco to Iran, marital property clauses or separate agreements on marital property are simply added onto the main Islamic marriage contract. Women can use these contracts to protect their rights in marriage and at its dissolution by stipulating clauses on property ownership and division, children, monogamy clauses, her right to work, accounting of unpaid contributions to the household, and matters requiring her consent. For example, the *Model Marriage Contract* addresses property rights and financial relations, allowing spouses to stipulate ownership, administration, use and disposition of property acquired prior to the marriage and during the marriage. Several groups such as Global Rights are campaigning for development of a model contract with sample conditions providing samples to draw upon which can be used in the Arab states (Global Rights 2008).

8. Conclusions

Ensuring women's access to land and property in the Arab world is a key priority that will not only improve the condition of women, but will have positive social and economic effects on their families, children in particular, and on the overall development of communities and societies.

Increasing women's security of tenure is particularly urgent in the countries and regions affected by conflict, displacement and migration where women are paying a higher price in terms of human rights violations and physical violence, both significantly mitigated by access to land and housing. In times of conflict, women are called to play a bigger role – if not being the only ones responsible for providing for their families and dependents, and access to land is a key component to empower them to do so.

Multisectoral approaches that support women from many angles are necessary to ensure increased access to land and property and the consequent overall improvement of the condition of women. This paper highlights in particular the need to provide protection from violence, support to legal assistance and access to land disputes resolution, better access to information, education and job opportunities.

The change advocated could only happen at the adequate scale if solutions are sought within the existing plurality of legal system, working flexibly with statutory law, religious law, customary laws and those who have a stake in implementing and administering such laws.

In the opinion of the authors, women organisations, communities, governments and development actors need to be mobilized for the improvement of the inheritance and dower mechanisms. Efforts need to be put in strengthening secondary rights for women and to capitalize on the role that marriage could play in securing land rights for women. In particular joint marital property needs to be promoted and widely tested as a key instrument for women tenure security.

Access to land and property are not merely a battle ground for resources and gender equality but a contest or between tradition and modernity over the evolving image of the family and the interpretation of women's roles in the Arab region. Muslim families in the urban world at least are rapidly changing from extended families to nuclear families and further into non-traditional living arrangements. Thus, there is a need to re-examine “concepts of personhood, property, and the conjugal contract in the new evolving

contexts, in which cultural ideas are reworked as women and men reposition themselves and attempt to secure their economic futures in the context of changing material conditions and shifting fields of power” (Li 1998).

Land rights are part of the larger issue of women’s empowerment and participation in post-conflict situations and their role in resolution (Nakaya 2003). Working with human rights and development frameworks as well as engaging with customary and Islamic discourses, Arab women and men are seeking ways to reconcile universal and local practices and principles. In post-conflict situations, meeting the priorities of shelter, access to health care and education, and access to credit and livelihood strategies will require innovative yet sustainable approaches. In the Arab world, the continuum of land rights straddles statutory, customary and Islamic land tenures and property flows, where land interventions and gender equality strategies are most effective when acknowledging local realities and referencing community discourses in meeting global development standards.

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