

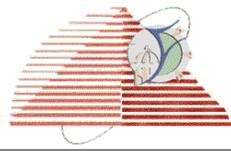
<p>LAND TOOLS TO INCREASE TENURE SECURITY FOR WOMEN IN THE MUSLIM WORLD</p> <p>MODULE 4: WHAT PROTECTS WOMEN ACCESS TO LAND</p>	<p>عنوان البحث باللغة التي نشر بها</p>
<p>Practitioners' Group Meeting</p> <p>LAND TOOLS TO INCREASE WOMEN'S TENURE SECURITY IN MUSLIM COMMUNITIES</p> <p>27-29 October 2014, Amman, Jordan</p> <p>Global Land Tool Network, GLTN, UN-Habitat, the Urban Training and Studies Institute, UTI, University of East London, & International Islamic University of Malaysia</p>	<p>جهة النشر</p>
<p>Presented on 28 October 2014, Amman, Jordan</p>	<p>تاريخ النشر</p>
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ملخص البحث باللغة الإنجليزية (اللغة التي نشر بها)

LAND TOOLS TO INCREASE TENURE SECURITY FOR WOMEN IN THE MUSLIM WORLD

MODULE 4: WHAT PROTECTS WOMEN ACCESS TO LAND

Women and men's *de jure* access to land is regulated by the formal legal system, and in many developing countries similarly through customary law. What are the **protection tools** which guarantee women access to land? There are two levels of these tools (regional and international). These tools include; statutory laws ;civil & Islamic, customary laws, human and Islamic rights. There are many examples of how the two levels can both prevent and promote women's access to land. The formal legal statutory laws (state law & Islamic law) in many countries have constitutions or land laws that grant gender equality in access to land but where laws for marriage, divorce and inheritance contradict these laws by discriminating against women and daughters. On the other hand, several documents discussed engage with the assumption by some gender advocates that customary law is always inimical to achievement of women's rights (Debbie Budlender & et al, 2011; Adoko, 2008; Razavi, 2007). Within the Islamic framework, a Muslim woman possesses independent legal, economic and spiritual identity: she also has independence, supported by *Qur'anic* injunctions with respect to access to land. (Sirag Sait & Hilary Lim, 2006). Islamic principles include land rights for a broad range of potentially



marginalized groups, including women, children, people who are landless and minorities. (Sirag Sait & Britta Peters, 2011). At the international level; (human and Islamic rights), there is a well-established set of rights relating to women and land property . These human rights include non-discrimination against women in general, and particularly with respect to property, land and housing rights, is dealt with by the *”UDHR, ICESCR, ICCPR. CEDAW” defines discrimination against women and establishes an agenda for national action to end discrimination and outlines the rights of women in reference to land issues with respect of the ownership, acquisition, management, administration, enjoyment and disposition of property (Sirag Sait ,2010). In parallel issues, Islamic human rights principles with relation to land rights are a manifestation of Islamic conceptions of property and land as registered in the key texts of the *Qur'an*, and the *Sunna*

Finally, there is potential in the integrated and cohesive property regime for women within Islamic jurisprudence. A question was raised: can the holistic approach to property rights for women in Islamic land law compensate women, through the life course, for their reduced inheritance rights through other means of wealth generation? These methods include a woman’s equal access to purchase through earnings, *awqaf*, gifts and special supplements such as savings (from lack of financial obligations within the family), *mahr* and maintenance. In current practice, the system fails to deliver equitable access to land for several reasons. First, there is no mechanism to ensure that the woman is compensated for her inheritance loss in other ways, as there are different interests and relationships in play at various stages of the woman’s life.

The legal ideology may be holistic, but choices are often made in a vacuum, in the sense that they are made on the basis of current demands or needs, rather than in a ‘life course’ perspective. Second, while inheritance shares are often land rights, the others such as *mahr*, maintenance and beneficial interests under a *waqf* ahli, the last now largely abolished – are at best limited to usufruct rights or wealth. Property tends to flow away from women, not towards them. In any event under social or familial pressure women may give up that inheritance right to land, or ‘exchange’ it for cash or other property, which may or may not actually be paid. Third, customary norms through family and kinship structures seem to have trumped Islamic principles by making earnings and savings difficult, the *mahr* and maintenance rights nominal, conditional or non-enforceable, and inheritance rights often merely theoretical. However, Islamic principles and early practice demonstrate that it does not have to be this way and that a reappraisal of Islamic law could empower Muslim women and enhance security of tenure.

KEYWORDS: Land Tenure Security, Land Tools, Property and Land