Islam, Land & Property Research Series

PAPER 2: Islamic Land Tenures and Reform
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## Paper 2: Islamic Land Tenures and Reform

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INTRODUCTION TO THE ISLAM, LAND & PROPERTY RESEARCH SERIES

The global mandate and activities of UN-HABITAT (United Nations Human Settlements Programme) in promoting access to land and protecting security of tenure are derived from a range of international human rights and development standards. While land, property and housing rights are generally cross-cultural and asserted within every socio-economic and political system, it is recognised that practice regarding their regulation and protection may take different forms. The Land and Tenure Section, Shelter Branch of UN-HABITAT has recently carried out systematic research into distinctive land, housing and property issues and approaches in various regions of the world including Africa, Latin America and the Balkans. It uses a ‘best practices’ approach to develop affordable, pro-poor and flexible tenure types and land tools, particularly for women. These tools are incorporated into UN-HABITAT’s global campaigns and programmes as well as made available to governments, civil society and all stakeholders for their advocacy work and for implementation of relevant laws and policies.

During its work in a range of countries from Afghanistan to Indonesia, UN-HABITAT has been increasingly aware of the importance of Islamic land tenure conceptions and land rights. Over 20 percent of the world’s population is Muslim but there has been little research on the complex and distinctive forms of land tenure and land rights. Too often global reviews of land tenure are undertaken without taking Islamic laws relating to land sufficiently into account. The Land and Tenure Section of UN-HABITAT therefore commissioned two experts Mr. M. Siraj Sait and Dr. Hilary Lim from University of East London, United Kingdom to carry out a year long in depth study of the Islamic and other dimensions of land and property rights in the Muslim world.

The objective of this research was to produce a body of material, through eight position papers, accompanied by a database, with proposed strategies which could enhance the knowledge and augment the capacity of UN-HABITAT and its partners to work more effectively in Muslim contexts. However, these papers have been written for a general audience without any assumption of knowledge regarding Islam, law or property rights and are therefore offer basic information as well as an opportunity to revisit first principles.

The general findings of the research are that there are distinctive Islamic conceptions of land and property rights which are varied in practice throughout the Muslim world. Though Islamic law and human rights are often an important factor in the conceptualisation and application, they intersect with State, customary and international norms in various ways. In doing so, they potentially offer opportunities for the development of ‘authentic’ Islamic land tools which can support the campaign for the realization of fuller land rights for various sections of Muslim societies, including women. However, in order to facilitate that role, the various stakeholders must constructively review the normative and methodological Islamic frameworks and their relationship with other systems of formal and informal land tenure.

Paper I on *Islamic Land theories and Their Application* contextualises and introduces Islamic property and land concepts as part of a sophisticated and alternate land framework running alongside international regimes. The Islamic property rights framework conceives of land as a sacred trust but promotes individual ownership with a re-distributive ethos. It argues that engagement with Islamic dimensions of land may potentially support land rights initiatives in Muslim societies and has implications for
programmes relating to land administration, land registration, urban planning and environmental sustainability. Position Paper II on *Islamic Land Tenure and Reforms* explores how land tenure concepts, categorisations and arrangements within the Islamic world are multi-faceted, generally distinctive and certainly varied. This paper explores the socio-historical context and development of Islamic land tenure regimes leading to the 'web of tenure' in contemporary Muslim societies. An appreciation of the historical context of land tenure in Muslim societies and the range of land tenure forms contributes towards development of authentic and innovative strategies for enhancing access to land and land rights.

Position Paper III on *Islamic Law, Land and Methodologies* finds Islamic law (Shari'a) an important factor influencing land rights and tenure systems in Muslim societies. Islamic law can be seen as an evolving, responsive and assimilating sphere of competing ideologies and interests, though it is a site of struggle between conservatives and liberals. An appreciation of the distinctive features and sources of Islamic law, its methodologies and diversity in application and its dispute resolution mechanisms would contribute towards strategies aimed at enhancing security of tenure. Position Paper IV *Islamic Human Rights and Land* sets out to examine the relationship between international human rights and Islamic conceptions of human rights in theory and practice. It argues that, with respect to land rights, the difference between these two sets of rights appears minimal and a sensitive and careful recognition of Islamic religious and political sensitivities can help deliver international human rights more effectively in Muslim societies, without offending Islamic principles.

Position Paper V *Muslim Women’s Rights to Property* explores the nature and scope of women’s rights to property and land under Islamic law (Shari’a) through a socio-historical background to women’s property rights, an appraisal of modern legal reforms and the avenues for enhancing their security of tenure. It argues that despite assumptions to the contrary, there are potential empowering strategies for women through Islamic law which can enhance women’s access to land and enforcement of their other property rights. Position Paper VI *Islamic Inheritance Laws and Systems* considers how Muslim societies generally derived their inheritance rules from religious sources for the division of an individual’s property upon death, some of which are controversial. Yet, it argues that the application of these formal inheritance rules pertaining to designated shares must be understood in a broader socio-cultural and economic context and within wider inheritance systems of practice.

Position Paper VII *Islamic Endowments (Waqf) and Indigenous Philanthropy* outlines how the endowment (waqf plural awqaf) is a key Islamic institution, which has incorporated within its legal sphere vast areas of land within the Muslim world, connected firmly with the religious precept of charity. Modern reforms in several Muslim countries have abolished, nationalised or highly regulated endowments but the endowment (waqf) remains influential and there are clear signs of its reinvigoration. The paper evaluates the role for the Islamic endowment (waqf) in strategies to improve security of tenure based on its legal foundations, history and socio-economic impacts. Position Paper VIII *Islamic Credit and Microfinance* considers the increasing demand from within Islamic communities that financial services be compliant with Islamic law (Shari’a). This paper explores the Islamic context which stimulates such alternative credit systems, the key distinguishing features of the Islamic banking models, the development of Islamic microfinance models and the practical challenges to these
innovations. It considers how Islamic finance, banking principles and credit, particularly housing microfinance, can contribute to security of tenure and in transforming the lives of the poor.

The findings of this study were discussed at a workshop on ‘Land tenure and Land law tools in the Middle East and North Africa’ in Cairo, Egypt on December 17 2005. This preparatory meeting for World Urban Forum (WUF III) 2006 was part of a meeting 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. This research was also presented at the Expert Group Meeting (EGM) at Bangkok, Thailand on ‘Secure Land Tenure: New legal frameworks and tools in Asia and Pacific’ December 7-9 2005 organised by organised by UN-HABITAT, United Nations Economic and Social Commission for Asia and Pacific (UNESCAP), International Federation of Surveyors (FIG) and World Bank.

Through this preliminary study, UN-HABITAT and its partners seek to discuss and develop strategies through identification and development of innovative and pro-poor land tools in their particular context.
Every aspect of land tenure is intricately connected with the socio-political life of the community. Most conflicts seem to arise over access to land or rather the abuse of perceived rights to the land. Land issues in the Middle East are complicated because of the vast variety of forms of landholding—Al-ard btifriq bi-l-shibr (land differs from one foot of ground to the next).

(Schaebler, 2000:242)

OVERVIEW

Land tenure concepts, categorisations and arrangements within the Islamic world are multi-faceted, generally distinctive and certainly varied. These ‘web of tenure’ regimes are often dismissed as intractable, inscrutable or outdated, but the lack of adequate systematic research hampers our understanding of the current manifestations of Islamic land concepts. The evolution of Islamic land tenure regimes from the classical and Ottoman periods to the colonial and contemporary times provides vital insights into the dynamics of Islamic land. What emerges is the interplay of a range of Islamic land approaches, State interventions, customary practices and external influences. This paper explores the socio-historical context and development of Islamic land tenure regimes. An appreciation of the historical context of land tenure in Muslim societies and the range of land tenure forms may well contribute towards development of authentic and innovative strategies for enhancing access to land and land rights.

Scope of this Position Paper: This position paper contextualises Islamic land tenure in Section 1. In Section 2, it considers theories regarding Islamic land tenure. Section 3 explores land tenure regimes in Ottoman practice while Section 4 outlines the features of Ottoman land administration and regulation. Section 5 examines the impact of colonialist land administration influence considering the modern ‘tenure web’ while Section 6 considers the phenomenon of the post-colonial tenure web. Section 7 offers five strategies for empowerment through land tenure conceptions:

* Recognise historical contexts of contemporary land tenure regimes;
* Derive legitimacy from authenticated Islamic forms of tenure;
* Take advantage of the ‘Web of Tenure’;
* Facilitate a range of tenure models
* Engage with communal and indigenous land tenures.
2.1 CONTEXTUALISING ISLAMIC LAND TENURE

2.1.1 Diversity of Islamic tenure systems

Land tenure concepts have to be understood within the complex, dynamic and overlapping weave of Islamic legal principles, State and international legal frameworks, customary norms and informal legal rules. One of the key features of land tenure systems and legal categories in the Muslim world is that they were embedded and remain embedded in their complex, particular and in many ways local histories.

2.1.2 Islamic contribution to land tenure regimes

It is sometimes difficult to discern the Islamic content in the modern land tenure regimes of many Muslim countries, particularly outside the Middle East. However, it is undoubtedly present, to varying degrees, even where land law is driven largely by the seemingly wholly secular demands of the strict 'Torrens' registration system.

2.1.3 Security of Tenure in the Muslim world

The challenges of urbanisation, population and poverty, together with the increasing pressures on land and environment, arise throughout the Muslim world, although with variations between countries as elsewhere across the globe. Of particular concern is lack of secure land tenure for significant proportions of these populations. Research indicates the widest range of options should be considered in attempts to enhance security of tenure, bearing in mind local conditions and context. In the Muslim world, debates about the development of policy towards informal settlements often take a religious dimension.

2.1.4 Islamic ‘Web of tenures’ as a continuum

Documented titles, particularly freehold titles, secured through the formal legal structures common in the West, have been projected as the best tenure option and goal for all States. Urban land tenure cannot be understood through simple and conventional binaries of legal/illegal, formal/informal or even secure/insecure. The residents of informal settlements in Muslim countries also exist on the tenure continuum. Islamic ‘webs of tenure’ could be mapped on a continuum that is neither hierarchical nor universal but adjusted to local contexts and choices.

2.2 LAND TENURE IN ISLAMIC THEORY

2.2.1 Categorisation of land

There are widely thought to be three broad types of land and land tenure in Islamic theory. These are land in full ownership (mulk) state owned land (miri) and endowed
land (waqf). Fundamental to these categories is the traditional Islamic theory of taxation. Sustained and developed under Ottoman rule into the 19th Century, they continue as conceptions if not categories into modern Muslim societies.

2.2.2 Dead (mewat) land

Individuals have the right to reclaim waste or empty land (mewat), that is land without an owner which is uncultivated and undeveloped. This demonstrates further the Islamic requirement that land should be used for productive purposes. The Mewat concept is important in the material sense, but also in the manner in which people 'think through' their relationship with land, as seen by the approach of squatters in Saudi Arabia.

2.2.3 Rent and sharecropping

The legal prohibition against hoarding has led to considerable debate amongst Islamic scholars concerning the appropriate utilisation of land, particularly with respect to the question of rent and the related issue of sharecropping. Some Islamic economists argue for instance that land rent for surplus land is always unlawful. Others hold that the tradition prohibits only the payment of rent on land which has not been improved in some way.

2.2.4 Limits on individual ownership

Islamic law (Shari'a) does not have a general theory of public property law and the rules in relation to land were not systematically organised, but derived from those dealing with taxation, conquest and the division of the spoils of war. Land ownership, belonging ultimately to God, is not absolute or unconditional and is subject to an overall social orientation, for land was given to the community of Muslims (umma) for the use and benefit of that community.

2.2.5 Acquiring ownership of land

Private ownership may be obtained either through transaction, such as sale (bay) or gift (hiba), possession, including the reviving of dead land (mewat) and inheritance. Some scholars suggest that the high esteem given to sanctity of contracts and the promises within them preclude State intervention other than in limited circumstances to prevent exploitation.

2.2.6 Pre-emption (shuf'a)

Pre-emption (shuf'a) is the means by which a co-inheritor or neighbour may use a privileged option to purchase land when it is for sale. It is a process capable of keeping strangers to communities on the outside and thereby placing limitations upon certain kinds of economic development. Different schools of law take different approaches to pre-emption but it is an important Islamic doctrine.
2.3 LAND TENURE REGIMES IN OTTOMAN PRACTICE

2.3.1 Making of Ottoman law

Islamic categories of land and land tenure were not derived simply from the nature and quality of property rights or Islamic legal theory, but owed much to the demands of the State in the Ottoman world. Complex power relations shaped the forms of tenure that emerged and property rights in land in the Ottoman world should be viewed as a 'bundle' which was subject to a dynamic process of negotiation, re-negotiation and resistance. Various types of tenure, authorising land use or rights to revenue, 'did not correspond to an understanding of ownership' - whether State or private- at least in the Western liberal sense of the word.

2.3.2 Conferring full land ownership (mulk/milk)

*Mulk* land gives the holder extensive power to use and enjoy the land, including disposing of it, making a gift of it, settling it as an endowment (*waqf*) in perpetuity or leaving it in a will in the form of a bequest. The origins of private land in full ownership (*mulk*) lie in land owned by Muslims and upon which a tithe of one tenth was collected (*ushr*), as opposed to a tax (*kharaj*).

2.3.3 Implications of State land (*miri*)

Under the Ottomans (1299-1923) virtually all cultivated land, State land in the possession of individuals, became known as *miri*. It is a term which derives from, or is a shortened version, of the literal explanation that it was land under the control of the leader of the Muslims (*Amir-al-Muslinin*). However, Ottoman land tenure concepts, for example, should not to be confused with the British concept of crown land/public domain.

2.3.4 Empty land (*Mewat*)

In contrast to the modern situation in many Muslim countries, the Ottoman State was not concerned with any 'shortage of land', rather it was keen to encourage the cultivation and use of land to ensure the continuance of subsistence farming and a regular supply of provisions to urban dwellers. In the Ottoman world, dead land (*mewat*), that is undeveloped land at a distance from any town or village, in accordance with Islamic legal theory, could be 'enlivened' through cultivation or other acts such as irrigation. The occupier who reported and received the permission of the State would be granted rightful possession.

2.3.5 Communal land (*musha*)

Pastoral lands, as opposed to cultivated land, were held as the traditional communal domain of particular tribes both for residence and herding according to local custom. The term *musha* was used, at village level, to denote either common undivided land or communal grazing land.
2.4 OTTOMAN LAND ADMINISTRATION

2.4.1 Regulation of state land (miri) and the Ottoman Land Code 1858

The Ottoman Land Code of 1858 was based upon both Ottoman practice and Islamic law. It defined the five categories of land: private ownership (mulk), State land (miri) and endowment (waqf), dead land (mewat), and public land for general use such as pastures for the use of particular towns and villages, markets, parks and places to pray (metruke). The Code remains the basis for modern state legislation and the division into these forms of land tenure remains in place today.

2.4.2 Extension of possession rights in state land (miri)

Land in private ownership (mulk) continued to be governed by Islamic law (Shari'a). However, the differences between State land (miri) and land in private ownership (mulk) were in practice fairly narrow. State land (miri), that is the grant of the usufruct rights (tapou/tapu), could now be inherited, though according to the principles and requirements of the Ottoman Land Code and not as stipulated in Islamic law (Shari'a).

2.4.3 Effecting the transfer of ownership

In Shari'a courts across the Ottoman world the traditional method for registering property transactions and demonstrating ownership was by means of a document (hujja, literally proof), sealed by the court, which was often the only means for effecting land transactions between buyers and sellers. However, where no such documentary proof existed, the prospective seller could fall back on witnesses prepared to confirm both continuous possession of the land in question and also the absence of any other contenders as to its ownership.

2.4.4 Registration under the Ottoman Land Code

The cadastral registers that were a feature of the Ottoman world in the 16th and 17th Century have survived and proved to be a rich source for historians. Alongside the central registers, were provincial registers, detailing revenues in relation to towns and villages. At the root of the Ottoman Land Code lay a system of compulsory registration of usufruct rights in State land (miri), in the government land register office and the issue of an official title deed as evidence of ownership (tapu), but it was not fully carried through.

2.5 IMPACT OF COLONIALIST LAND ADMINISTRATION

2.5.1 Colonial responses to state land (miri)

The period of the direct colonial engagement had a direct impact on conceptualisation of State land and further complicated land tenure regimes. Some colonial administrators construed land held as miri within a wider definition of State land than that envisaged within Islamic legal principles, or indeed even that pertaining under Ottoman rule. Confusion as to the precise nature of usufruct rights in miri land came at least in part
from the translation of this category, which persists today and is used in this paper for convenience, into the term 'State land'.

3.5.2 Colonial attitudes to land use

Under Ottoman law a person who possessed uncultivated miri land (mah lul) who informed the state would be able to obtain a grant of title (tapu). However, under the Mahlul Lands Ordinance of 1920 the best that he/she could hope for would be a lease. The colonial powers were also anxious to limit rights over dead (mewat) land, so that they could be drawn into state control. The early period of British Mandate rule in Palestine saw also the 1921 Land Transfer Ordinance, which deemed that all land transactions, with the exception of short leases, would require consent from the High Commissioner who was not obliged to supply any reason for refusal.

2.5.3 Re-establishment of the land registration system

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2.5.4 Impact of colonialism on land redistribution

Colonial land measures have been internalised and the dual track of part secularisation/modernisation (arising from colonial heritage) and part Islamisation (from the Ottoman experience) of land tenure systems did take place through codification. These post-colonial codes preserved either explicitly, or implicitly in the case of Iraq, basic and traditional categories of land in full ownership (mulk), endowment (waqf) and state land (miri), although the emphasis varied depending upon the particular histories of these different countries and earlier reforms.

2.6 THE POSTCOLONIAL LAND TENURE WEBS

2.6.1 Persistence of Islamic land tenure conceptions

Islamic land tenure systems, which were filtered through Ottoman administration and then colonial constructions, have endured into the postcolonial world. At least in most of the Middle East, the Islamic tradition is relatively easy to detect in official land law systems, albeit overlaid in many countries with secular codes. The distinction between the land itself and its usufruct, the principle that ownership of land lies with God but is held in trust by the State for the community of Muslims still underpins categories of land which are utilised today.

2.6.2 Developing modern land administration systems

Land administration, management, regulation and conflict resolution are usually a part of the public sphere. Land registration, which has a relatively long history across the Middle East, is embedded in some parts of the region, though there is some resistance. It carries with it at least a veneer of secularism, although it bumps against the Islamic legal framework and customary/unofficial tenure.
2.6.3 Privatisation and the Egyptian 1992 Tenancy Act

The impact of land reform in terms of land redistribution, land administration and management with respect to access to land are generally evaluated as limited. Access to land in much of the Muslim world, as in other parts of the world, is considered to be considerably worse in comparison to the situation several decades ago. Perhaps the most highly visible of these legislative interventions is Egypt’s 1992 Tenancy Act, fully implemented from 1997, which revoked much of Nasser’s agrarian reforms of the 1950’s and 1960’s. The Tenancy Act may have laid the basis for stimulating and improving the land market, but significant progress in market development remains unlikely while landowners often fail to register title to their land.

2.6.4 The post colonial web of Islamic land tenure

The 'web of tenancy' is used to denote the 'multiple interrelated tenancy relationships in which the landholder accesses land through combinations of more than one pattern'. The confluence of Islamic principles, Ottoman law, colonial interventions, custom and unofficial norms may not merely have led to a 'web of tenancy' in some households, but a broader 'tenure web'. There exist no 'clean patterns' or 'neat categories', but multiple combinations of relations which give access to land.

2.6.5 Safety webs for informal arrangements?

Functioning informal markets sometimes use traditional documentation (hujja) as evidence in the legitimate transfer of property interests. As evidenced in Yajouz in Jordan communal elements form part of the web of tenure in some contexts. Several of these phenomena have proven highly resilient and resistant to the efforts of reformers, continuing to play a role in the lives and the minds of postcolonial actors. For instance, the Musha land system, that is communal land held in shares and involving the periodic redistribution of lots, survived the demise of the Ottoman Empire and the colonial mandate authorities that followed, despite attempts at abolition and land registration.

2.6.6 Women and Islamic land tenure arrangements

Islamic law provides women with substantial rights to acquire, manage and alienate property. However, under classical Islamic law (Shari’ā), which governed the devolution of land in full ownership (mulk), women were accorded smaller inheritance shares. State land (miri) was inherited according to state law, crucially in equal shares by both sons and daughters and with children placed first on the list of those with a right to inheritance, but some modern states have made state land (miri) subject to Islamic inheritance law. Ownership and management of endowment (waqf) property was historically important for women. The abolition, nationalisation and decline of the endowment (waqf) may deprive women of a further means of access to land. Modernist land reforms initiated across the Middle East bypassed most women, consolidating land in the hands of males.
2.7 STRATEGIES FOR EMPOWERMENT THROUGH ISLAMIC LAND TENURES

2.7.1 Recognise historical contexts of contemporary land tenure regimes

Though the histories of individual Muslim countries vary, the contemporary land tenure regimes have evolved from, or have been influenced by, a variety of historical periods or episodes. To unravel or effectively engage with these complex and overlapping land tenure forms requires a sensitivity to land history, which often takes the form of local or communal narratives. These include the impact of distinctive pre-Ottoman Islamic land conceptions, the Ottoman land administration and regulatory framework, the colonialist modifications or extensions of land tenure practice and the post-colonial and modernist land reforms. The current dominant forms of land tenure are equally rooted in resilient customary practices and State interventions and together form the basis through which individuals and groups in particular contexts think through their relationships with land and with one another. Strategies to enhance access to land must be based upon detailed research as to the particular tenure categories, which are relevant in specific localities.

2.7.2 Derive legitimacy from authenticated Islamic forms of tenure

Though land tenure systems in the Muslim world are often a convergence of State designs, customary practices and increasingly international pressures which are modernist and secular, there is generally a consciousness of Islamic land conceptions. The range of land tenures, classifications and categories in the postcolonial Middle East and many parts of the Muslim world are derived often from Islamic principles developed and manipulated by successive regimes, particularly during the long period of Ottoman rule, and to varying degrees the colonial and post colonial governments. With the increasing calls for ‘authenticity’ through return or reinvigoration of Islamic and indigenous principles and practices, the strategy of legitimising innovative land tenure arrangements through recourse to Islamic historical and spiritual principles could facilitate reforms. What is necessary though is the articulation that rather than being static, monolithic or exclusive formulae, Islamic land systems can be responsive, flexible and capable of catering to a wide range of contexts and diverse constituencies of claimants.

Islamic law facilitates full ownership, conceives of ‘State’ lands which could be used in the public interest and also accommodates collectives and group land access and usufruct rights. Land readjustment strategies which find their authority and social legitimacy in enduring Islamic principles of equity and egalitarianism as in communal (‘musha’) villages, using plot exchanges and compensation, could in appropriate circumstances enhance access to land where there are often fragmented parcels and a web of tenures. Similarly, the institution of the endowment (waqf) can facilitate land rights that are often preserved within a smaller circle of the landed class.

2.7.3 Take advantage of the ‘Web of Tenure’

Rather than view the mesh of complex, sometimes seemingly ad hoc, tenure forms as necessarily a barrier to economic development and the provision of secure access to land, they may be used beneficially and can be a positive force. In reality, there exist few ‘clean
categories', but rather a web of tenure with a local distinctiveness which may be focused even at the level of particular communities. This fluidity and often overlapping situations could augment innovation and offer a range of choices. Some tenure forms are recognised by the State and incorporated into legislation or recognised as social practice. However, whether they are formally part of policy or tolerated as customary arrangements, they work best because they are closer to the lived experiences of the people who use them, rather than a top-down approach.

Fragmentation of land is a perceived problem with regard to this tenure web, with even those individuals possessing quite large total landholdings and operating as landlords, owning or co-owning small plots. These have been, in part, the consequence of the agrarian reform processes of the 1950's and 1960's, but Islamic inheritance rules also play a part. Current policy making around land regularisation in the Middle East that seeks to encourage the registration of individual land titles can only be one of the approaches, to address this issue. Equally strategies to enhance land rights for women or disadvantaged/vulnerable groups must be aware of Muslims, like others, may prefer to keep 'ownership' outside of official control attempts to avoid further land fragmentation even where it appears to be counter-intuitive to the outsider.

2.7.4 Facilitate a range of tenure models

Islamic land tenure regimes offer a range of options relating to the protection of rights of occupation, possession, use, usufruct and full ownership for a wide range of constituencies including the urban poor, squatters and slum dwellers. It offers several avenues for regularising informal settlements. Land registration can have advantages but are not always preferred or possible. Land registration has a long history and is well embedded in many Muslim countries, including parts of the Middle East, with some sophisticated systems using modern technology. At first sight this would appear to lay solid foundations for land regularisation processes focused upon securing ownership and access to land through formal titling. However, vast tracts of land in the Middle East, even where modern registration systems exist, remain unregistered, not least much of the endowed land (waqf) and land falling under the control of government.

Moreover, strategies at local, household and individual level to avoid registration of title are also entrenched and have a long history. Relatively large and wealthy landowners choose to remain outside the official land titling processes, even where this may preclude the use of credit mechanisms and full engagement in land markets. The motivations that underpin such strategies are multifarious. They include a desire to circumvent the strict application of Islamic inheritance rules, and the consequence fragmentation of ownership and landholdings and to avoid the high costs of registration, including those associated with fragmented plots.

Also registration may not be chosen because it is difficult to bring the prevailing local forms of land tenure within the officially recognised categories, or because the State refuses to register land ownership which challenges or places barriers to the State's own development plans. Fear of appropriation may also be a factor, as is the fact that 'unofficial' markets and tenure formations may operate relatively efficiently and be responsive to local needs. Contemporary policies surrounding the encouragement of land titling may be too abstract in the above climate and strategies concerned with access to
land, rather than titling, may better encompass the requirements of many communities in relation to secure tenure. In practice, the seemingly complex web of Islamic tenures can be mapped against a continuum model, which is not hierarchical but promotes choice regarding a range of options.

2.7.5 Communal and indigenous land tenure

Communal relations to land have endured both in practice and as a state of mind within the Muslim world. They have survived in the face of legal systems in which the concept of State land (miri) dominates and is manipulated by successive regimes to establish control over any land in which individual ownership claims cannot be maintained. In some areas these customary tenures have survived despite the attempts by tribal leaders to use land registration as a means to turn communal land into a large individual land holding. Communal land relationships exist often in areas where the people concerned are particularly vulnerable, amongst nomadic pastoralists, in areas of marginal rainfall, but also in the village, peri-urban or urban context. It is crucial in these contexts, where change is proposed or State policies are likely to impinge on the area, that the local populations are engaged in participatory development processes in order to find their own indigenous solutions. Islamic tenure webs potentially offer innovative tenures that could be part of a dynamic continuum of tenure model choices that are efficient, appropriate and authentic.

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