

Women and Land in the Muslim World

By
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Why women need land

- Women's access to, use of and control over land and other productive resources are essential to ensuring their right to equality and to an adequate standard of living. These resources help to ensure that women are able to provide for their day-to-day needs and those of their families, and to weather some of life's most difficult challenges. Women's access to land and other productive resources is integrally linked to discussions around global food security, sustainable economic development, as well as the pressing fight against the HIV epidemic and prevention of and responses to gender-based violence.

UN Women

Women & land in SDGs



TARGET 1.4

- By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance

INDICATOR 1.4.2

- Proportion of total adult population with secure tenure rights to land, with legally recognized documentation and who perceive their rights to land as secure, by sex and by type of tenure



Women & land in SDGs

TARGET 5.A

- Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws

INDICATOR 5.A.1

- (a) Proportion of total agricultural population with ownership or secure rights over agricultural land, by sex; and (b) share of women among owners or rights-bearers of agricultural land, by type of tenure

INDICATOR 5.A.2

- Proportion of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control

Women, land and economic empowerment

Usually, the rate of women owning land in the Muslim countries cannot be computed, due to the lack of sex-segregated statistics.

A rate of 5% of women owners is however generally admitted.

Bearing in mind the fact that land is primarily an economic asset, the low female ownership rate indicates, inter alia, that Muslim women are usually less economically active than women in other countries.

Let us have a look at employment rates of Muslim women.

Women and economic empowerment

Arab countries:

In spite of the educational effort in favor of women, the challenge of closing the gender gap in economic participation remains especially acute in the Middle East and North Africa (MENA). Despite having a growing pool of highly educated women who want to work, MENA still has the lowest female labour force participation rate in the world at an average of 24%, compared to around 60% in OECD economies, and the highest gender gap in entrepreneurship.

OECD

Women and economic empowerment

Turkey's 7th CEDAW report

- While women's labour force participation rate was 24.5 per cent and employment rate was 21.6 per cent in 2008, they rose up to 30.8 and 27.1 respectively in 2013.
- Women make up 42.4 per cent of the total informal employment in Turkey. While the rate of informality among the employed women had been 58.4 per cent in 2008, it decreased to 51.9 per cent in 2013. The highest rate of informality among women belonged to unpaid female family workers (95 per cent)

Women and economic empowerment

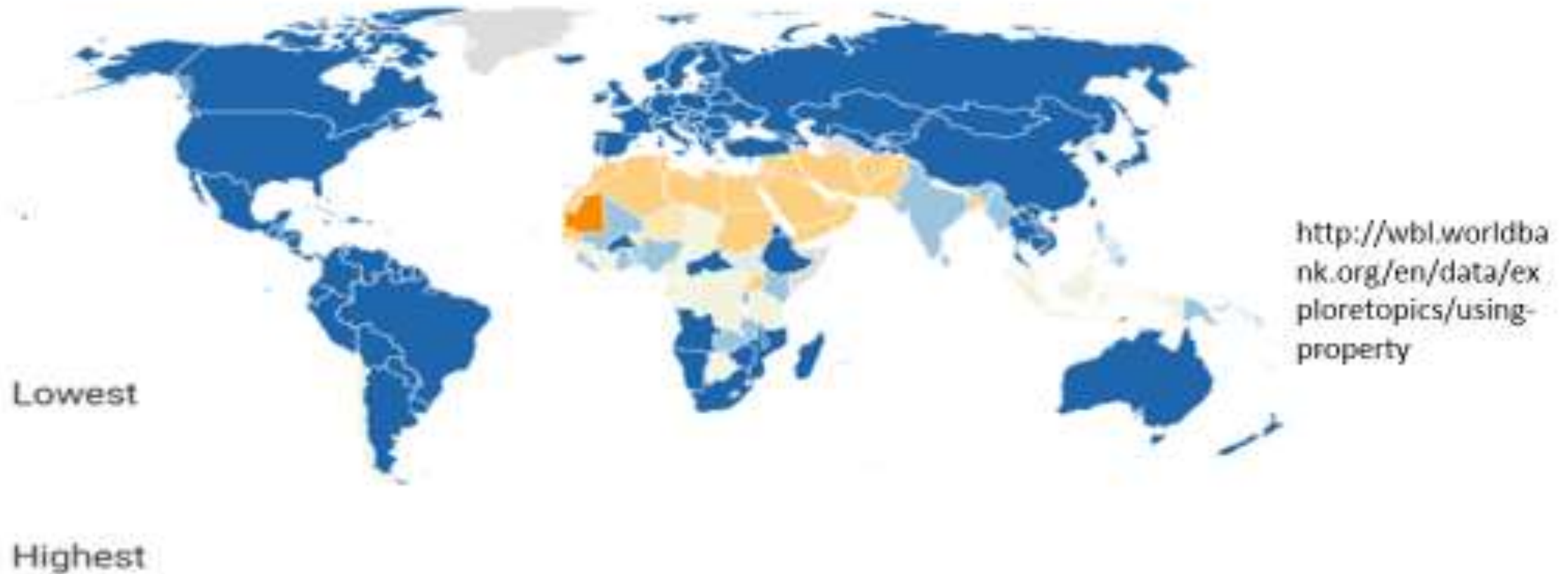
Women entrepreneurs in the MENA region tend to have a lower socio-economic profile than their male peers (OECD, 2014a; OECD/IDRC, 2013). Women entrepreneurs generally come from households with lower income levels and have fewer resources to set up a business. Women who own and manage ventures have lower education levels than men, although they are more educated than the average MENA woman. They also have much less work experience, given their overall low level of labour force participation, affording them fewer opportunities to acquire skills, identify potential business opportunities and set aside savings. Women's limited work experience before starting a business is likely to drive a higher attrition rate, since business experience is critical for success (OECD/IDRC, 2013).

(Women's Economic Empowerment in Selected MENA Countries, OECD, p. 34)

Women and economic empowerment

- This situation exists in spite of regulations providing equality between men and women, often theoretically guaranteed by constitution.
- But limitations to women's freedoms are still predominant, in particular serious obstacles to women's mobility due to permanence of guardianship (by father, husband or even brother)
- In addition to primacy of family responsibilities in women's lives
- These traditions should be tackled in the frame of negotiation of marriage contracts, as an addendum to the traditional marriage contracts.

Nearly 40% of economies restrict women's property rights



This map depicts topic-level scores for using property. A score of less than 100 indicates at least one legal constraint on women's property rights.

Source: Women, Business and the Law database • Get the data

Avenues to women's access to land

Avenue	Legal status	Obstacles
Purchase	Authorized	Requires financial capacity ; may apply to well off women, or to economically active women
Gifts	Authorized, usually from next of kin (parents, brothers, husband, etc.)	Concerns mainly mobile items, sometimes land (requires economic involvement)
Dower	Compulsory for marriage	Concerns mainly mobile items, sometimes land (requires economic involvement)
Inheritance	Main means of access to land. However, daughter is entitled to half of the brethren's share. Widow gets $\frac{1}{4}$ of inheritance if no kids, and $\frac{1}{8}$ with kids (Quran 4, 12).	Girls are often excluded from land inheritance to the benefit of their brothers, against financial compensation, traditionally evaluated by the family's males.

Inheritance problems in Palestine

Social traditions in Palestine are such that women are usually excluded, by their family, of land inheritance to the exclusive benefit of male heirs. This procedure is called « takharuj ».

A financial compensation is paid to female heirs, the amount of which is also defined by family, quite often below the value of the land supposed to be inherited.

The justification of this « takharuj » is the belief that the woman would deprive, by her marriage, the family of a piece of land, to the benefice of the woman's husband family.

Palestinian women's organizations have challenged this reality.

Palestinian campaign in favor of women's inheritance rights

Women's associations succeeded in obtaining a decree by the Head of the **Higher Council of Islamic Jurisdiction**, which decides that:

The takharuj can only be registered four months after the decease. During this period, the list of movable and immovable items of the heritage should be completed, and the each share of each heir valued. These documents should be signed by all the heirs under the control of the municipal council.

The result of this procedure should be registered in the Higher Court for verification purposes.

Palestinian campaign in favor of women's inheritance rights

The advantages of this decree are obvious:

- Avoid family pressures just after the bereft of the deceased
- Guarantee the transparency of the inheritance process
- Provide legal protection to women's inheritance rights

This important success has encouraged women's associations to further develop their advocacy campaigns in favor of the defense of women's land inheritance rights.



GLTN

الشبكة الدولية للأدوات و للآليات العقارية



Inheritance of a right of use

- State lands in the Fertile Crescent countries are called « miri ».
- The right of use of miri land is inherited by sons and daughters of the deceased on an equality basis, contrary to Islamic inheritance laws.
- This rule has probably been set up by the Ottoman rulers whose their reign ended in 1919 in the Arab countries.

Inheritance and property in Turkey

- Turkish law grants equal inheritance shares to female and male children. Under Article 649 of the Civil Code, the right to an equal inheritance share for a woman compared to her brother cannot be revoked even if it is willed by the deceased. The land inheritance law (Article 661) has also been revised to eliminate previous gender inequality. Before the Civil Code reform, priority over agricultural holdings was given to male heirs, purportedly to prevent land fragmentation. (SIGI)
- On the other hand, any belongings acquired during marriage are considered by law as joint property: The Civil Code of 2001 held that property acquired during marriage must be shared equally between the spouses in the case of divorce, easing the financial burden of divorce for many women. (SIGI)

NIGER

- In spite of equal inheritance rights being granted by state law and protected by Islamic land law - even if to a lesser extent - customary practices in most communities exclude women from inheriting certain assets, including land. Studies done on the Fulani and Gobiraoua ethnic groups show how women are completely excluded from inheritance, while a survey conducted in the Maradi Department shows that, when land is abundant, women access and inherit land, but as soon as the resource starts to dwindle, the readjustment is done at their expense and they lose their right to land inheritance. In these contexts, several women resort to Islamic inheritance rules to claim their rights to land.

NIGER



- A large consultation on women’s inheritance rights was held, involving the local land commissions (CoFos), civil society organizations, local authorities, traditional leaders and marabouts. The discussions concluded that, based on Islamic inheritance rules, women’s inheritance rights should be respected and registered by the local CoFos.
- This case shows how Islamic land inheritance principles and awareness raising of traditional and religious leaders at local level can lead to the enhancement of women’s inheritance rights, even in rural contexts where female literacy is very low.

Malaysia



- Landownership in Malaysia is based upon a customary Malay law called “Adat Perpatih”, in which the word “adat” is Arabic by origin and means custom.
- One of the major characteristics of adat perpatih is the matrilineal system, whereby ancestry land and rights are passed from mothers to daughters to the extent that if the couple does not have any daughters, the ancestry land will go the nieces or if there is no niece, to the female cousins or the nearest female descendants of the mother, rather than to the son/s.

Malaysia



- This customary principle is the basis of marriage regulations providing for the conditions of marital property, or “harta sepencarian” in Malay. According to the Malaysian Legal Aid Department, “harta sepencarian” is defined under section 2 of the Islamic Family Law (Federal Territories) Act 1984 and means **property jointly acquired by husband and wife during the subsistence of the marriage.**
- Sharia court has the power to order the division of any assets acquired by the couples during their marriage by their joint efforts, or the sale of any assets and the division between the parties of the proceed of the sale of the property when permitting the pronouncement of talaq (repudiation) or when making an order of divorce.

Joint property

- Generally, any real estate purchased by a couple is solely registered in the name of the husband, even if the wife has contributed to funding this purchase.
- In case of death of the husband, or repudiation of the wife, the latter finds herself without a husband and without a house...
- The authors, together with the GLTN, consider that marriage contracts should incorporate joint property for the belongings acquired during the marriage, once more illustrating the paramount importance of this contract in the life of a woman in a Muslim context.

Conclusion

- Women in the Muslim world face complex legal situations usually characterized by three legal reference frames: customary law, Islamic law and modern law
- According to specific situations, one of these frames prevails, and the key factor to defending women's rights is definitely the direct implication of women through their organizations to provide counselling and support about marriage and property
- Land professionals should also play their part in this regard, in particular in providing counselling, in the spirit of the SDGs' values